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FEDERAL REGISTER

Vol. 89 Monday,
No. 135 July 15, 2024

Pages 57339–57716

OFFICE OF THE FEDERAL REGISTER

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Federal Register
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Monday, July 15, 2024

Presidential Documents

Title 3—

The President

Proclamation 10782 of July 10, 2024

Adjusting Imports of Aluminum Into the United States

By the President of the United States of America

A Proclamation

1. On January 19, 2018, the Secretary of Commerce (Secretary) transmitted to the President a report on the Secretary's investigation into the effect of imports of aluminum articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised the President of the Secretary's opinion that aluminum articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), the President concurred in the Secretary's finding that aluminum articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of aluminum articles by imposing a 10 percent ad valorem tariff on such articles imported from all countries except Canada and Mexico. Proclamation 9704 further stated that any country with which the United States has a security relationship is welcome to discuss alternative ways to address the threatened impairment of the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that the President determines that imports from that country no longer threaten to impair the national security, the President may remove or modify the restriction on aluminum articles imports from that country and, if necessary, adjust the tariff as it applies to other countries, as the national security interests of the United States require.

3. In Proclamation 9704, the President also directed the Secretary to monitor imports of aluminum articles and inform the President of any circumstances that in the Secretary's opinion might indicate the need for further action under section 232 of the Trade Expansion Act of 1962, as amended, with respect to such imports.

4. In Proclamation 9893 of May 19, 2019 (Adjusting Imports of Aluminum Into the United States), the President noted that the United States had successfully concluded discussions with Mexico on satisfactory alternative means to address the threatened impairment of the national security posed by aluminum imports from Mexico. The United States agreed on a range of measures with Mexico that were expected to allow imports of aluminum from Mexico to remain stable at historical levels without meaningful increases, thus permitting the domestic capacity utilization to remain reasonably commensurate with the target level recommended in the Secretary's report. In the President's judgment, these measures would provide effective, long-term alternative means to address the contribution of Mexico's imports to the threatened impairment of the national security.

5. The President determined in Proclamation 9893 that, under the framework in the agreement reached with Mexico, imports of aluminum from Mexico would no longer threaten to impair the national security and accordingly

excluded Mexico from the tariff proclaimed in Proclamation 9704, as amended. The President noted that the United States would monitor the implementation and effectiveness of these measures in addressing our national security needs, and that the President may revisit this determination as appropriate.

6. In Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), the President noted that, among other things, imports of certain derivatives of aluminum articles had significantly increased since the imposition of tariffs and quotas on imports of aluminum articles in 2018. The President further noted the Secretary's assessment that foreign producers increased shipments of such derivative articles to the United States to circumvent the duties on aluminum articles imposed in Proclamation 9704 and that the net effect of the increase of imports of these derivatives had been to erode the customer base for United States producers of aluminum and undermine the purpose of Proclamation 9704.

7. Based on such assessments by the Secretary, the President concluded in Proclamation 9980 that it was necessary and appropriate in light of our national security interests to adjust the tariffs imposed by previous proclamations to apply to certain derivatives of aluminum articles from most countries, excluding Argentina, Australia, Canada, and Mexico. This action was necessary and appropriate to address circumvention that was undermining the effectiveness of the adjustment of imports made in Proclamation 9704, as amended, and to remove the threatened impairment of the national security of the United States found in that proclamation.

8. The Secretary has informed me that domestic aluminum producers' capacity utilization remains below the target 80 percent capacity utilization recommended in the Secretary's report of January 19, 2018, and imports of aluminum articles from Mexico have increased significantly as compared to their levels at the time of Proclamation 9893. Furthermore, Mexico lacks primary aluminum smelting capabilities, and the country of smelt or country of most recent cast is unknown for a significant volume of aluminum imports from Mexico. In the Secretary's opinion, these developments indicate the need for further action under section 232 of the Trade Expansion Act of 1962, as amended, with respect to such aluminum imports. In monitoring the implementation and effectiveness of the agreement with Mexico in addressing our national security needs, I have determined that it is appropriate to revisit the President's determination in Proclamation 9893 regarding the applicability of the tariff imposed in Proclamation 9704 to aluminum articles imports from Mexico.

9. Accordingly, the United States will implement a country of smelt and country of most recent cast requirement for imports of aluminum articles that are products of Mexico, and will increase the section 232 duty rate for imports of aluminum articles and derivative aluminum articles that are products of Mexico containing aluminum for which the reported primary country of smelt, secondary country of smelt, or country of most recent cast is China, Russia (subject to paragraph 10 of this proclamation), Belarus, or Iran. In order to be eligible for importation free from section 232 tariffs, aluminum articles and derivative aluminum articles that are products of Mexico must be accompanied by a certificate of analysis and must not contain primary aluminum for which the reported primary country of smelt, secondary country of smelt, or country of most recent cast is China, Russia (subject to paragraph 10 of this proclamation), Belarus, or Iran. In my judgment, these measures will provide an effective, long-term alternative means to address any contribution by Mexican aluminum articles imports to the threatened impairment of the national security by restraining aluminum articles imports to the United States from Mexico, limiting transshipment, and discouraging excess aluminum capacity and production. The United States will monitor the implementation and effectiveness of the measures agreed upon with Mexico in addressing our national security needs, and I may revisit this determination, as appropriate.

10. In Proclamation 10522 of February 24, 2023 (Adjusting Imports of Aluminum Into the United States), the President determined that it was necessary and appropriate to impose a 200 percent ad valorem tariff on aluminum articles where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or the aluminum articles are cast in Russia, and derivative aluminum articles where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or the derivative aluminum articles are cast in Russia. Proclamation 10522 shall continue to apply to aluminum articles and derivative aluminum articles that are products of Mexico to the extent such articles contain any primary aluminum that is smelted or cast in Russia. If Proclamation 10522 is suspended, this proclamation shall apply with respect to aluminum articles and derivative aluminum articles that are the product of Mexico and contain primary aluminum for which the primary country of smelt, secondary country of smelt, or country of most recent cast, is Russia. While in effect, Proclamation 10522 supersedes this proclamation.

11. To prevent transshipment, excess production, or other actions that would lead to increased exports of aluminum articles to the United States, the United States Trade Representative, in consultation with the Secretary, shall advise me if there is a surge in imports of aluminum articles to the United States from Mexico and on the appropriate means to ensure that such imports from Mexico do not undermine the national security objectives of the tariff imposed in Proclamation 9704, as amended. If necessary and appropriate, I will consider directing the U.S. Customs and Border Protection (CBP) of the Department of Homeland Security to no longer exclude imports of aluminum articles from Mexico from the tariff imposed in Proclamation 9704, as amended.

12. In light of my determination to adjust the tariff proclaimed in Proclamation 9704, as amended, as applied to eligible aluminum articles imports from Mexico, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to such tariff as it applies to other countries. I have determined that it is necessary and appropriate, at this time, to maintain the current tariff level as it applies to other countries.

13. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

14. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) To establish a country of smelt and country of most recent cast requirement for imports of aluminum articles and derivative aluminum articles from Mexico, and an increase in the duty rate for imports of aluminum articles and derivative aluminum articles that are products of Mexico containing aluminum for which the reported primary country of smelt, secondary country of smelt, or country of most recent cast is China, Russia (subject to paragraph 10 of this proclamation), Belarus, or Iran, amendments to U.S. note 19 to subchapter III of chapter 99 and new HTSUS headings are provided for in the Annex to this proclamation. Imports of aluminum articles and derivative aluminum articles that are products of Mexico shall

be exempt from the new duty provided that such aluminum products do not contain primary aluminum for which the reported primary country of smelt, secondary country of smelt, or country of most recent cast is China, Russia (subject to paragraph 10 of this proclamation), Belarus, or Iran.

(2) Aluminum articles eligible for treatment under clause 1 of this proclamation must be accompanied by a certificate of analysis in order to receive such treatment. Eligible aluminum articles must not contain primary aluminum for which the reported primary country of smelt, secondary country of smelt, and country of most recent cast is China, Russia (subject to paragraph 10 of this proclamation), Belarus, or Iran. ''Primary country of smelt'' is defined as the country where the largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall-Héroult process. ''Secondary country of smelt'' is the country where the second largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall-Héroult process. ''Country of most recent cast'' refers to the country where the aluminum (with or without alloying elements) was last liquified by heat and cast into a solid state. The final solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished aluminum product. The Secretary, in consultation with the Secretary of Homeland Security and the United States Trade Representative, is authorized to take such actions as are necessary to ensure compliance with this requirement. Failure to comply could result in applicable remedies or penalties under United States law.

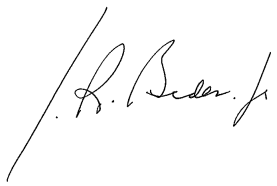
(3) For purposes of implementing this and other proclamations, importers shall provide to CBP the information necessary to identify the countries where the primary aluminum used in the manufacture of aluminum articles imports covered by clause 1 of Proclamation 9704 are smelted and information necessary to identify the countries where such aluminum articles imports are cast. CBP shall implement the smelt and cast information requirements as soon as practicable.

(4) The modifications to the HTSUS made by clause 1 of this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 10, 2024, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(5) Any imports of aluminum articles that are products of Mexico and that were admitted into a U.S. foreign trade zone under ''privileged foreign status'' as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on July 10, 2024, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on July 10, 2024, to the provisions of Proclamation 9893, Proclamation 9980, and Proclamation 10522 (for imports containing aluminum smelt or cast in Russia).

(6) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of July, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.



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ANNEX

TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 10, 2024, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States ("HTSUS") is hereby modified below. Any imports of aluminum articles and derivative aluminum articles of Mexico that were admitted into a U.S. foreign trade zone under "privileged foreign status" as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on July 10, 2024, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on July 10, 2024, to the provisions of Proclamations 9893 and 9980, and of Proclamation 10522 (for imports containing aluminum smelt or cast in Russia).

1. The following new subdivision (a)(viii) is inserted at the end of U.S. note 19 to subchapter III of chapter 99 of the HTSUS:

   "19(a)(viii) Heading 9903.85.71 provides the ordinary duty treatment of aluminum articles enumerated in subdivision (b) of this note that are products of Mexico and contain primary aluminum for which the primary country of smelt, secondary country of smelt, or country of most recent cast, is China, Russia, Belarus or Iran. For any such goods that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duty provided in such heading shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff heading, except where prohibited by law. A Certificate of Analysis for a smelted primary aluminum used in a product imported under the above headings, or such other information as may be required by U.S. Customs and Border Protection, must be supplied by the importer in order to make entry under this subdivision. Goods for which entry is claimed under a provision of chapter 98 and which are subject to the additional duties prescribed herein shall be eligible for and subject to the terms of such provision and applicable U.S. Customs and Border Protection ("CBP") regulations, except that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article. Notwithstanding the provisions of this subdivision, for so long as Proclamation 10522 of February 24, 2023 ("Adjusting Imports of Aluminum Into the United States") remains in effect, headings 9903.85.67 and 9903.85.69 shall continue to apply aluminum articles where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted or cast in Russia."

2. The following new subdivision (a)(ix) is inserted at the end of U.S. note 19 to subchapter III of chapter 99 of the HTSUS:

   "19(a)(ix) Heading 9903.85.72 provides the ordinary duty treatment of derivative aluminum articles that are the product of Mexico, and contain primary aluminum for which the primary country of smelt, secondary country of smelt, or country of most recent cast, is China, Russia, Belarus or Iran. For any such products that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duty provided in these headings shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff heading, except where prohibited by law. A Certificate of Analysis for a smelted primary aluminum used in a product imported under the above headings, or such other information as may be required by U.S. Customs and Border Protection, must be supplied

by the importer in order to make entry under this subdivision. Goods for which entry is claimed under a provision of chapter 98 and which are subject to the additional duties prescribed herein shall be eligible for and subject to the terms of such provision and applicable U.S. Customs and Border Protection ("CBP") regulations, except that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article. Notwithstanding the provisions of this subdivision, for so long as Proclamation 10522 of February 24, 2023 ("Adjusting Imports of Aluminum Into the United States") remains in effect, headings 9903.85.68 and 9903.85.70 shall continue to apply to derivative aluminum articles where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted or cast in Russia."

3. The article description of heading 9903.85.01 is modified by inserting after "of Mexico" the following: "(except as specified in subdivision (a)(viii) of such U.S. note 19)".

4. The article description of heading 9903.85.03, is modified by inserting after "of Mexico" the following: "(except as specified in subdivision (a)(ix) of such U.S. note 19)".

5. The following new headings are inserted in numerical sequence:

"9903.85.71	Aluminum articles of Mexico enumerated in U.S. note 19 to this subchapter, containing primary aluminum for which the primary country of smelt, secondary country of smelt, or country of most recent cast, is China, Russia, Belarus or Iran.	The duty provided in the applicable subheading + 10%		
9903.85.72	Derivative aluminum articles of Mexico enumerated in U.S. note 19(a)(iii) to this subchapter, containing primary aluminum for which the primary country of smelt, secondary country of smelt, or country of most recent cast, is China, Russia, Belarus or Iran.	The duty provided in the applicable subheading + 10%"		

[FR Doc. 2024–15632
Filed 7–12–24; 8:45 am]
Billing code 7020–02–C

Presidential Documents

Proclamation 10783 of July 10, 2024

Adjusting Imports of Steel Into the United States

By the President of the United States of America

A Proclamation

1. On January 11, 2018, the Secretary of Commerce (Secretary) transmitted to the President a report on the Secretary's investigation into the effect of imports of steel mill articles (steel articles) on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised the President of the Secretary's opinion that steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), the President concurred in the Secretary's finding that steel articles, as defined in clause 1 of Proclamation 9705 (as amended by clause 8 of Proclamation 9711 of March 22, 2018 (Adjusting Imports of Steel Into the United States)), are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of steel articles by imposing a 25 percent ad valorem tariff on such articles imported from all countries except Canada and Mexico. Proclamation 9705 further stated that any country with which the United States has a security relationship is welcome to discuss alternative ways to address the threatened impairment of the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that the President determines that imports from that country no longer threaten to impair the national security, the President may remove or modify the restriction on steel articles imports from that country and, if necessary, adjust the tariff as it applies to other countries, as the national security interests of the United States require.

3. In Proclamation 9705, the President also directed the Secretary to monitor imports of steel articles and inform the President of any circumstances that in the Secretary's opinion might indicate the need for further action under section 232 of the Trade Expansion Act of 1962, as amended, with respect to such imports.

4. In Proclamation 9894 of May 19, 2019 (Adjusting Imports of Steel Into the United States), the President noted that the United States had successfully concluded discussions with Mexico on satisfactory alternative means to address the threatened impairment of the national security posed by steel imports from Mexico. The United States agreed on a range of measures with Mexico that were expected to allow imports of steel from Mexico to remain stable at historical levels without meaningful increases, thus permitting the domestic capacity utilization to remain reasonably commensurate with the target level recommended in the Secretary's report. In the President's judgment, these measures would provide effective, long-term alternative means to address the contribution of Mexico's imports to the threatened impairment of the national security.

5. The President determined in Proclamation 9894 that, under the framework in the agreement reached with Mexico, imports of steel from Mexico would

no longer threaten to impair the national security and accordingly excluded Mexico from the tariff proclaimed in Proclamation 9705, as amended. The President noted that the United States would monitor the implementation and effectiveness of these measures in addressing our national security needs, and that the President may revisit this determination as appropriate.

6. In Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), the President noted that, among other things, imports of certain derivatives of steel articles had significantly increased since the imposition of tariffs and quotas on imports of steel articles in 2018. The President further noted the Secretary's assessment that foreign producers increased shipments of such derivative articles to the United States to circumvent the duties on steel articles imposed in Proclamation 9705, and that the net effect of the increase of imports of these derivatives had been to erode the customer base for United States producers of steel and undermine the purpose of Proclamation 9705.

7. Based on such assessments by the Secretary, the President concluded in Proclamation 9980 that it was necessary and appropriate in light of our national security interests to adjust the tariffs imposed by previous proclamations to apply to certain derivatives of steel articles from most countries, excluding Argentina, Australia, Brazil, Canada, Mexico, and South Korea. This action was necessary and appropriate to address circumvention that was undermining the effectiveness of the adjustment of imports made in Proclamation 9705, as amended, and to remove the threatened impairment of the national security of the United States found in that proclamation.

8. The Secretary has informed me that domestic steel producers' capacity utilization remains below the target 80 percent capacity utilization recommended in the Secretary's report of January 11, 2018, and imports of steel articles from Mexico have increased significantly as compared to their levels at the time of Proclamation 9894. In the Secretary's opinion, these developments indicate the need for further action under section 232 of the Trade Expansion Act of 1962, as amended, with respect to such steel imports. In monitoring the implementation and effectiveness of the agreement with Mexico in addressing our national security needs, I have determined that it is appropriate to revisit the President's determination in Proclamation 9894 regarding the applicability of the tariff imposed in Proclamation 9705 to steel articles imports from Mexico.

9. Accordingly, the United States will implement a melt and pour requirement for imports of steel articles that are products of Mexico and will increase the section 232 duty rate for imports of steel articles and derivative steel articles that are products of Mexico that are melted and poured in a country other than Mexico, Canada, or the United States. In order to be eligible for importation free from section 232 tariffs, steel articles and derivative steel articles that are products of Mexico must be melted and poured in Mexico, Canada, or the United States. In my judgment, these measures will provide an effective, long-term alternative means to address any contribution by Mexican steel articles imports to the threatened impairment of the national security by restraining steel articles imports to the United States from Mexico, limiting transshipment, and discouraging excess steel capacity and production. The United States will monitor the implementation and effectiveness of the measures agreed upon with Mexico in addressing our national security needs, and I may revisit this determination, as appropriate.

10. To prevent transshipment, excess production, or other actions that would lead to increased exports of steel articles to the United States, the United States Trade Representative, in consultation with the Secretary, shall advise me if there is a surge in imports of steel articles to the United States from Mexico and on the appropriate means to ensure that such imports from Mexico do not undermine the national security objectives of the tariff imposed in Proclamation 9705, as amended. If necessary and appropriate,

I will consider directing the U.S. Customs and Border Protection (CBP) of the Department of Homeland Security to no longer exclude imports of steel articles from Mexico from the tariff imposed in Proclamation 9705, as amended.

11. In light of my determination to adjust the tariff proclaimed in Proclamation 9705, as amended, as applied to eligible steel articles imports from Mexico, respectively, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to such tariff as it applies to other countries. I have determined that it is necessary and appropriate, at this time, to maintain the current tariff level as it applies to other countries.

12. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

13. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) To establish a melt and pour requirement for imports of steel articles and derivative steel articles that are products of Mexico, and an increase in the duty rate for imports of steel articles and derivative steel articles that are products of Mexico that are melted and poured in a country other than Mexico, Canada, or the United States, amendments to U.S. note 16 to subchapter III of chapter 99 and new HTSUS headings are provided for in the Annex to this proclamation. Imports of steel articles and derivative steel articles that are products of Mexico shall be exempt from the duty provided that such steel products are melted and poured in Mexico, Canada, or the United States.

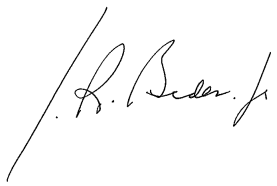
(2) For purposes of implementing the melt and pour requirements in this and other proclamations, importers of steel and steel derivative articles shall provide to CBP the information necessary to identify the countries where the steel used in the manufacture of steel articles imports, covered by clause 1 of Proclamation 9705, and derivative steel articles, specified in Annex II of Proclamation 9980, are melted and poured. CBP shall implement the melt and pour information requirements as soon as practicable.

(3) The modifications to the HTSUS made by clause 1 of this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 10, 2024, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(4) Any imports of steel articles that are products of Mexico and that were admitted into a U.S. foreign trade zone under ''privileged foreign status'' as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on July 10, 2024, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on July 10, 2024, to the provisions of Proclamations 9894 and 9980.

(5) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of July, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.



Billing code 3395–F4–P

ANNEX

TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 10, 2024, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States ("HTSUS") is hereby modified below. Any imports of steel articles and derivative steel articles of Mexico that were admitted into a U.S. foreign trade zone under "privileged foreign status" as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on July 10, 2024, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on July 10, 2024, to the provisions of this Proclamation.

1. The following new subdivision (h)(i) is inserted at the end of U.S. note 16 to subchapter III of chapter 99 of the HTSUS:

   "16(h)(i) Heading 9903.81.85 provides the ordinary duty treatment of steel articles that are products of Mexico, provided that such steel products are melted and poured in a country other than the United States, Mexico or Canada, for products enumerated in subdivision (b) of this note. For any such goods that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duty provided in such heading shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff subheading, except where prohibited by law. Goods for which entry is claimed under a provision of chapter 98 and which are subject to the additional duties prescribed herein shall be eligible for and subject to the terms of such provision and applicable U.S. Customs and Border Protection ("CBP") regulations, except that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article. Except as otherwise provided in this subdivision, the duty provided in these headings shall be collected on the full value of the article that contains steel that was melted and poured in a country other than the United States, Mexico or Canada. Importers of steel articles shall provide to CBP information necessary to identify the country or countries where the steel used in the manufacture of steel articles imports are melted and poured."

2. The following new subdivision (h)(ii) is inserted at the end of U.S. note 16 to subchapter III of chapter 99 of the HTSUS:

   "16(h)(ii) Heading 9903.81.86 provides the ordinary duty treatment of the derivative steel articles that are products of Mexico, provided that such derivative steel products are melted and poured in a country other than the United States, Mexico or Canada, for products enumerated in subdivision (a)(ii) of this note. For any such goods that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duty provided in such heading shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff subheading, except where prohibited by law. Goods for which entry is claimed under a provision of chapter 98 and which are subject to the additional duties prescribed herein shall be eligible for and subject to the terms of such provision and applicable U.S. Customs and Border Protection ("CBP") regulations, except that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article. Except as otherwise

provided in this subdivision, the duty provided in these headings shall be collected on the full value of the article that contains steel that was melted and poured in a country other than the United States, Mexico or Canada. Importers of steel derivative articles shall provide to CBP information necessary to identify the country or countries where the steel used in the manufacture of derivative steel articles imports are melted and poured."

3. The article description of heading 9903.80.01 is modified by inserting after "of Mexico" the following: "(as specified in subdivision (h)(i) of such U.S. note 16)".

4. The article description of heading 9903.80.03, is modified by inserting after "of Mexico" the following: "(as specified in subdivision (h)(ii) of such U.S. note 16)".

5. The following new headings are inserted in numerical sequence:

"9903.81.85	Steel articles of Mexico enumerated in U.S. note 16 to this subchapter, where the steel was melted and poured in a country other than the United States, Mexico or Canada.	The duty provided in the applicable subheading + 25%		
9903.81.86	Derivative steel articles of Mexico enumerated in U.S. note 16 to this subchapter, where the steel was melted and poured in a country other than the United States, Mexico or Canada.	The duty provided in the applicable subheading + 25%"		

[FR Doc. 2024–15641
Filed 7–12–24; 8:45 am]
Billing code 7020–02–C

Rules and Regulations

Federal Register
Vol. 89, No. 135
Monday, July 15, 2024

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Agency Docket Number: SBA–2024–0005]

7(a) Working Capital Pilot Program

AGENCY: U.S. Small Business Administration.

ACTION: Notification of pilot program and request for comments.

SUMMARY: SBA is introducing a new pilot loan program within the 7(a) Loan Program called ''7(a) Working Capital Pilot'' (WCP) to provide SBA 7(a) guaranteed lines of credit up to $5 million that may be used to support domestic and international transactions with SBA fees due from the Lender that operate as a function of time, charging a proportional amount for each year the facility is in use.

DATES:

Effective date: The WCP Program will be effective on August 1, 2024, and will remain in effect through July 31, 2027.

Comment date: Comments must be received on or before August 14, 2024.

ADDRESSES: You may submit comments, identified by SBA docket number SBA–2024–0005, through the Federal eRulemaking Portal: *https://www.regulations.gov/*. Follow the instructions for submitting comments.

SBA will post all comments on *https://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the information via email to *Ginger.Allen@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Specific WCP policy questions should be directed to *7aWCP@sba.gov.* For further information, contact Ginger Allen, Chief, 7(a) Loan Policy Division, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205–7110 or *Ginger.Allen@sba.gov,* or Daniel Pische, Director, International Trade Finance, Office of International Trade, Small Business Administration, at (202) 205–7119 or *Daniel.Pische@sba.gov.* The phone numbers above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background Information

As small businesses grow, they require access to working capital. Working capital is most economically delivered through a line of credit and allows businesses to take on new opportunities in a way that a term loan cannot. For example, manufacturers require a revolving line of credit to build a resilient inventory position, and a contractor requires access to a transaction-based project line to successfully secure a multi-year government contract. In both examples, the revolving nature of a line of credit provides the most efficient means for the business to control its cash flow and manage the associated interest expense in a dynamic rate environment. For example, for a permanent term (non-revolving) loan that provides working capital, the borrower receives one lump sum of money and interest immediately begins accruing on the entire sum. In contrast, with a revolving line of credit, the borrower only borrows money as needed and pays interest only on the time the funds are being used.

SBA's flagship business loan program is the 7(a) Loan Program, which currently offers four delivery methods for making SBA 7(a) guaranteed lines of credit. These delivery methods are the 7(a) SBA Express, CAPLine, Export Express, and the Export Working Capital Program (EWCP) programs. While the existing 7(a) line of credit delivery methods serve a similar working capital function, each has its own unique rules and limitations. For example, 7(a) SBA Express and Export Express loans are limited to a maximum loan size of $500,000, while CAPLines and EWCP loans can be approved up to $5 million. Lenders appreciate the flexibility offered by the CAPLines Program; however, the four subprograms within CAPLines can be confusing to administer, and the fee structure makes these types of loans expensive when compared to EWCP. Lenders find the EWCP Program to be more similarly structured to their conventional asset-based lending norms than the CAPLine Program, and Lenders prefer EWCP's fee structure over CAPLine's fee structure; however, EWCP loan proceeds may only be used to finance export transactions. The difference in rules creates a challenge for Lenders, who must learn and manage four separate programs for the delivery of their small business working capital, which negatively affects Lender participation while also reducing the availability of working capital for small businesses. For these reasons, SBA is establishing the new 7(a) Working Capital Pilot Program to allow participating 7(a) Lenders to make working capital loans more efficiently and effectively.

II. 7(a) Working Capital Pilot Program Overview

Per 13 CFR 120.3, SBA is establishing the WCP Program as a pilot program within the 7(a) Loan Program. The WCP will be effective August 1, 2024, and continue through July 31, 2027. The purpose of the WCP Program is to allow participating 7(a) Lenders to make working capital lines of credit through asset-based and transaction-based lines of credit. Lenders making WCP loans $150,000 or less will have an 85 percent SBA guaranty, and WCP loans greater than $150,000 will have a 75 percent SBA guaranty. WCP Program requirements will be built around established industry norms. SBA intends to make program enhancements based on Lender feedback during the duration of the pilot program.

WCP loans may be approved up to $5 million and may be used to support domestic and international transactions. Lenders may authorize a loan term up to 60 months. Lenders set interest rates that must comply with 13 CFR 120.213 and 120.214.

In compliance with § 120.214(c), SBA is providing notice in this **Federal Register** Notice that for the WCP Program, SBA is allowing Lenders to use the Secured Overnight Financing

Rate (SOFR) plus 3 percent as a base interest rate in addition to Prime and SBA's Optional Peg Rate. SBA recognizes that financial institutions use a range of SOFR products to deliver an equivalent reference rate (*e.g.,* 30-day term SOFR and 30-Day Average SOFR). Lenders may continue to use their established in-house SOFR reference rates of 30 days or less as these rates closely correlate with the daily SOFR rate. The amount of interest SBA will pay to a Lender following the default of a WCP loan will be calculated based on the daily SOFR rate as reported by the Federal Reserve Bank of New York.

Lenders must pay a guaranty fee to SBA for each loan made, and the guaranty fee due to SBA upon initial loan approval is called the SBA Upfront Fee. The SBA Upfront Fee for WCP is modeled after SBA's 7(a) EWCP Program, which has a guaranty fee that operates as a function of time, charging a proportional amount for each year the facility is in use. For example, a loan with a 36-month loan term pays an SBA Upfront Fee established for loans with a 36-month term, while loans with a 60-month loan term pay an SBA Upfront Fee that is proportionally higher based on the longer term.

SBA will publish the WCP Upfront Fee on SBA's website at *https://www.sba.gov/documents.* To provide an idea of how the WCP fee structure may look, the Upfront Fee for SBA's 7(a) EWCP Program in fiscal year (FY) 24 is: For loans of $1 million or less: 0%. For loans greater than $1 million with a maturity of 12 months or less: 0.25% of the guaranteed portion. For loans greater than $1 million with a maturity of 13 up to 24 months: 0.525% of the guaranteed portion. For loans greater than $1 million with a maturity of 25 up to 36 months: 0.8% of the guaranteed portion.

Lenders and Agents may collect fees from borrowers. Fees, including extraordinary servicing fees, are capped in accordance with 13 CFR 120.221 and Standard Operating Procedure (SOP 50 10). Extraordinary servicing fees are capped at 2 percent per year on the outstanding balance of the part requiring special servicing.

WCP loan proceeds may be used to provide a temporary advance against Federal and state tax credits and/or rebates in addition to certain other common uses for asset-based lines. The purpose for allowing WCP loan proceeds to be used to provide a temporary advance against Federal and or state tax credits and/or rebates is to provide immediate access to a portion of the funds once they are earned by the business and have been confirmed by the Lender.

More detailed guidance on the WCP will be provided in a 7(a) Working Capital Pilot Program Guide (Program Guide) published on SBA's website at *https://www.sba.gov/documents.* Except where the Program Guide provides other guidance, Lenders and loans must comply with the regulations outlined in parts 103, 105, 120, 121, and 134 of title 13 of the Code of Federal Regulations, and SOPs 50 10, ''Lender and Development Company Loan Programs'', which provides 7(a) loan origination policy, 50 56, ''Lender Participation Requirements'', which provides Lender participation and oversight requirements, and 50 57, ''7(a) Loan Servicing and Liquidation''. SBA will provide recorded training and downloadable slide decks on its Training on Demand page at *https://www.sba.gov/partners/lenders/training-demand.* SBA will also provide live training and one-on-one help from SBA subject matter experts. Lenders may sign up for notifications of training and ask WCP policy questions at *7aWCP@sba.gov.*

III. Eligible Lenders and Delegated Loan Processing

All participating 7(a) Lenders in good standing with a signed Loan Guaranty Agreement (Form 750) are eligible to participate in the WCP. The process for lenders to apply to participate with SBA as a 7(a) Lender is provided in SOP 50 56. If the 7(a) Working Capital Pilot is not extended, each Lender must continue to service and liquidate its WCP loans under the terms of the Pilot but will not be able to make any new WCP loans. If the WCP is extended or made permanent, each WCP Lender's authority to participate will be renewed based on the WCP Lender's compliance with the program requirements.

Under SBA's sole discretion, SBA may grant delegated authority to certain qualified Lenders with experience in asset-based lending to process, close, service, and liquidate WCP loans without prior SBA review. 7(a) Lenders with existing Preferred Lenders Program (PLP) delegated authority will *not* automatically have authority to make WCP loans using delegated authority. However, SBA will automatically approve Lenders in good standing that have PLP–EWCP delegated authority for PLP–WCP delegated authority with no action required by the PLP–EWCP Lender. Lenders in good standing with SBA that have delegated authority in the Export-Import Bank of the United States Working Capital Guaranty Program are immediately eligible for PLP–EWCP delegated authority. These Lenders should apply for PLP–EWCP status in accordance with SBA's SOP 50 56. Other participating 7(a) Lenders may apply for PLP–WCP delegated authority based on criteria listed in SOP 50 56 as well as specific criteria found in SBA 7(a) Working Capital Pilot Program Guide published on SBA's website at *https://www.sba.gov/documents.* Lenders with delegated authority may elect on a case-by-case basis to process certain loans under non-delegated authority.

IV. Budget Impact of WCP on 7(a) Loan Program

In FY25, SBA estimates it will approve approximately 270 WCP loans totaling $337 million. Half of that volume will be from loans that would have otherwise been approved as an SBA 7(a) Export Working Capital Program loan or SBA 7(a) CAPLines loan, and the other half will be new volume. The WCP is included in the 7(a) Loan Program budget estimate. The performance of these loans will be considered when calculating budget costs and any need for appropriations.

SBA analyzed the budget impact of WCP loans on the 7(a) Loan Program. The current estimates for FY24 and FY25 support the continued execution of the 7a Loan Program without needing an appropriation, and this will be reassessed annually.

V. Program Guide and Notices From SBA, Including Training

Inquiries on specific WCP policies may be sent to *7aWCP@sba.gov.* SBA will publish detailed WCP requirements in a Program Guide, which will be available on SBA's website at *https://www.sba.gov/documents.* SBA may also provide additional guidance through SBA notices on the same website. Lenders, SBA staff, and interested stakeholders may sign up for notification of upcoming training and program updates by copying the following text into a web browser, which will then create an email that can be sent without any further text entry: *https://outlook.office365.com/mail/deeplink/compose?mailtouri=mailto%3AOFANotifications%40sba.gov%3Fsubject%3D%2520REQUEST%2520TO%2520SUBSCRIBE%3A%2520OFA%2520207(a)%2520Working%2520Capital%2520Pilot%2520Program%2520%26body%3DPlease%2520add%2520me%2520to%2520this%2520newsletter.*

VI. Regulation Waivers

Pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend,

modify or waive certain regulations in establishing and testing pilot loan initiatives for a limited period of time, for the WCP Program SBA will waive the following regulations. SBA is waiving the regulation at 13 CFR 120.130(c) that prohibits loan proceeds to be used for revolving lines of credit except under SBA's 7(a) CAPLines and EWCP delivery methods. Because WCP is a program for delivering revolving lines of credit, the program is not feasible without waiving this regulation.

SBA is also waiving 13 CFR 120.452(a)(2) that prohibits Lenders from making a PLP 7(a) loan that reduces its existing credit exposure for any Borrower to permit 7(a) Lenders to use their PLP–WCP delegated authority to refinance an existing same-institution SBA Express loan into a WCP loan to provide growing small businesses the ability to transition from an SBA Express line of credit to a monitored WCP line of credit.

VII. Program Evaluation

SBA will evaluate the WCP Program periodically and prior to the initial end of the authorization period on July 31, 2027, to refine the program and to determine whether it should be made permanent. Evaluation criteria will include, but is not limited to, number of WCP loans approved, adoption rate (number of lenders making WCP loans), comparison of number of loans approved and adoption rate versus the same in 7(a) CAPLine and EWCP programs and among the top SBA Lenders, whether the costs (including losses) of the pilot are within an acceptable range, and portfolio performance as it relates to other 7(a) programs.

Authority: 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2024–15313 Filed 7–12–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1300

RIN 2127–AM65

Uniform Procedures for State Highway Safety Grant Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the definition of ''equipment'' to conform with OMB's government-wide Guidance for Federal Financial Assistance affecting Federal grants.

DATES: This final rule is effective on October 1, 2024.

ADDRESSES: This document may be viewed online through the Federal eRulemaking portal at *www.regulations.gov* using the RIN number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may be downloaded by accessing the Office of the Federal Register's website at: *www.federalregister.gov* and the U.S. Government Publishing Office's website at: *www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT:

Program issues: Barbara Sauers, Associate Administrator, Regional Operations and Program Delivery, National Highway Traffic Safety Administration; Telephone number: (202) 366–0144; Email: *barbara.sauers@dot.gov.*

Legal issues: Megan Brown, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone number: (202) 366–1834; Email: *megan.brown@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On February 6, 2023, NHTSA published in the **Federal Register** a final rule titled Uniform Procedures for State Highway Safety Grant Programs. 88 FR 7780 (Feb. 6, 2023). NHTSA promulgated this final rule in accordance with the Infrastructure Investment and Jobs Act (IIJA, also known as the Bipartisan Infrastructure Law or BIL), signed into law on November 15, 2021 (Pub. L. 117–58).

On April 22, 2024, after conducting notice and comment rulemaking, the Office of Management and Budget (OMB) published in the **Federal Register** revisions to its Guidance for Federal Financial Assistance, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (''Uniform Administrative Requirements''). 89 FR 30046 (Apr. 22, 2024). OMB is tasked with providing guidance to Federal agencies to ensure consistent and efficient use of Federal financial assistance and to provide direction and leadership to Federal agencies on Federal financial assistance requirements. In its final rule, OMB increased the monetary threshold for ''equipment'' in 2 CFR 200.1 from $5,000 to $10,000: This increase in the monetary threshold affects the application of several OMB requirements, including 2 CFR 200.313(e), which provides additional regulatory requirements relating to use, management and disposition of equipment acquired under a Federal award, and 2 CFR 200.439(b)(2), which provides rules of allowability for equipment. DOT adopts the Uniform Administrative Requirements via 2 CFR part 1201.

The regulation implementing NHTSA's State highway safety grant program lays out requirements related to ''equipment'' in 23 CFR 1300.31(d) specific to the NHTSA's grant program. Among other things, 23 CFR 1300.31(d) requires States to seek prior written approval from the Regional Administrator before purchasing or disposing of equipment, unless the to-be-disposed-of equipment ''exceeded its useful life'' under State law. 23 CFR 1300.31(d) uses a $5,000 monetary threshold to define ''equipment,'' matching the prior OMB rules.

II. Technical Amendment Increasing Monetary Threshold for Equipment

In this rule, effective for fiscal year 2025 grants, NHTSA makes a technical amendment to update the monetary threshold for equipment in NHTSA's Uniform Procedures for State highway safety grant programs from $5,000 to $10,000 in 23 CFR 1300.31(d) to conform with the updated OMB rules. As a result of this threshold increase, States will no longer have to seek pre-approval to purchase or dispose of equipment between $5,000 and $9,999.99. In addition, States will no longer have to apply the heightened rules for use and management of equipment for items that fall under $10,000. States should be aware, however, that they must continue to meet all State rules for equipment, as defined by the State. This rule will become effective on October 1, 2024, and will apply to fiscal year 2025 State highway safety grants and later.

III. Waiver of Notice and Comment

NHTSA concludes that it has good cause to issue without notice and comment this technical amendment

under 5 U.S.C. 553(b)(B). 5 U.S.C. 553(b)(B) provides that when an agency, for good cause, finds that notice and public comment are impractical, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment.

NHTSA makes this technical amendment to conform with the revisions published in OMB's final rule after OMB received and analyzed public comment. By issuing this technical amendment, NHTSA establishes consistency with OMB's rules and avoids confusion for State recipients of NHTSA's State highway safety grant programs as they prepare their fiscal year 2025 annual grant applications due August 2024.

Since NHTSA is issuing this technical amendment to conform with OMB's updated definition, providing notice and an opportunity for public comment is impracticable and unnecessary.

III. Regulatory Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 (as amended by E.O. 14094), E.O. 13563, and DOT's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866 or E.O. 13563. This action is not expected to impose any costs because it makes a limited revision that will lessen administrative burden under the State highway safety grant program. This rulemaking has been determined to be not ''significant'' under DOT's regulatory policies and procedures and the policies of OMB.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows agencies to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–21, 110 Stat. 857) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

This final rule makes a limited revision to the uniform procedures implementing State highway safety grant programs, which were previously determined not to have a significant impact on a substantial number of small entities. The grant programs impacted by this rule will affect only State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, NHTSA certifies that this action will not have a significant impact on a substantial number of small entities and finds that preparing a Regulatory Flexibility Analysis is unnecessary.

C. Executive Order 13132 (Federalism)

E.O. 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' 64 FR 43255 (August 10, 1999). ''Policies that have federalism implications'' are defined in the E.O. to include regulations that 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.'' Under E.O. 13132, an agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs not required by statute unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with the State and local government in the process of developing the proposed regulation. An agency also may not issue a regulation with federalism implications that preempts a State law without consulting with State and local officials.

NHTSA analyzed this rulemaking action in accordance with the principles and criteria set forth in E.O. 13132. The limited revision made by this rulemaking will decrease administrative burden for State recipients by updating the highway safety grant program's definition of ''equipment'' to conform with the updated OMB government-wide guidance for Federal financial assistance. Therefore, NHTSA determines that this technical amendment would not have sufficient federalism implications as defined in the Order to warrant formal consultation with State and local officials or preparation of a federalism summary impact statement.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to E.O. 12988 (61 FR 4729 (February 7, 1996)), ''Civil Justice Reform,'' the agency has considered whether this rule would have any retroactive effect. I conclude that it would not have any retroactive or preemptive effect, and judicial review it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review. This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3501 *et seq.,* a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rulemaking does not establish any new information collection requirements.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with the base year of 1995). This rulemaking would not meet the definition of a Federal mandate because the resulting annual State expenditures will not exceed the minimum threshold; instead, this rulemaking will likely decrease administrative costs for States. Further, this rulemaking action updates NHTSA's State highway safety grant program, a voluntary program and States that choose to apply and qualify would receive grant funds.

G. National Environmental Policy Act

NHTSA has analyzed the impacts of this rulemaking action under the National Environmental Policy Act (NEPA), codified at 42 U.S.C. 4321 *et seq.* NHTSA determines that this rulemaking would not have a significant impact on the quality of the human environment.

H. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

E.O. 13211 applies to any rulemaking that is: (1) determined to be economically significant under E.O. 12866, and likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. 66 FR 28355 (May 18, 2001). This rulemaking is not likely to have a significant adverse effect on the supply of, distribution of, or use of energy. This rulemaking has not been designated as a significant energy action. Accordingly, this rulemaking is not subject to E.O. 13211.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

NHTSA has analyzed this rulemaking under E.O. 13175 and determined that it would not have a substantial direct effect on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

J. Privacy Act

Please note that anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). For additional information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

List of Subjects in 23 CFR Part 1300

Administrative practice and procedure, Alcohol abuse, Drug abuse, Grant programs—transportation, Highway safety, Intergovernmental relations, Motor vehicles—motorcycles, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, under the authority of 23 U.S.C. 401 *et seq.,* the NHTSA amends 23 CFR part 1300 as follows:

PART 1300—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 23 U.S.C. 402; 23 U.S.C. 405; Sec. 1906, Pub. L. 109–59, 119 Stat. 1468, as amended by Sec. 25024, Pub. L. 117–58, 135 Stat. 879; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 1300.31 by revising paragraph (d) introductory text to read as follows:

§ 1300.31 Equipment.

* * * * *

(d) *Major purchases and dispositions.* Equipment with a useful life of more than one year and an acquisition cost of $10,000 or more shall be subject to the following requirements:

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.81 and 1.95 and 49 CFR 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2024–15289 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0569]

RIN 1625–AA00

Safety Zone; Upper Mississippi River Mile Markers 219.5 to 218.5 Grafton, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Mississippi River from mile marker (MM) 219.5 to 218.5 near Grafton, IL. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a Missouri National Guard training event near Grafton, IL. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Upper Mississippi River.

DATES: This rule is effective from July 15, 2024, until July 22, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0569 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MST1 Benjamin Conger, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2573, email *Benjamin.D.Conger@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MM Mile marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because of potential hazards created by the Missouri National Guard training event, in particular the presence of a military raft that will cross over the Upper Mississippi River during the event. As such, insufficient time exists to provide a reasonable comment period and then consider those comments before issuing the rule. It is impracticable to publish an NPRM because we must establish this safety zone by July 15, 2024.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the Missouri National Guard training event starting July 15, 2024, located between MM 219.5 to 218.5.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Upper Mississippi (COTP) has determined that potential hazards associated with the Missouri National Guard training event starting July 15, 2024, will be a safety concern for anyone operating or transiting within the Upper Mississippi River at between MM 219.5 to 218.5. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety

zone while the raft crossing is being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone during the Missouri National Guard training event on the Upper Mississippi River on July 15, 2024, and going through July 22, 2024. The safety zone will be active from 7 a.m.–7 p.m. each day and will cover all navigable waters from MM 219.5 to 218.5. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Missouri National Guard training event takes place on the Upper Mississippi River. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in the size of the safety zone as conditions improve, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB), as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Mississippi River. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone. The safety zone will be active and enforced only while training associated with the raft crossing is being conducted, from July 15, 2024, until July 22, 2024.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing the width of the Upper Mississippi River from MM 219.5 to 218.5. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket.

For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0569 to read as follows:

§ 165.T08–0569 Safety Zone; Upper Mississippi River, Mile Marker 219.5 to 218.5, Grafton, IL.

(a) *Location.* The following area is a safety zone: all navigable waters within the Upper Mississippi River, Mile Markers (MM) 219.5 to 218.5 near Grafton, IL.

(b) *Enforcement period.* This section is subject to enforcement from July 15, 2024, through July 22, 2024. The safety zone will be active from 7 a.m.–7 p.m. each day and enforced only while training associated with the raft crossing is being conducted. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 to advise when the zone is being enforced.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in size or scope of the safety zone as ice or flood conditions improve, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB) as appropriate.

Dated: July 9, 2024.

A.R. Bender,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2024–15469 Filed 7–12–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0498]

RIN 1625–AA00

Safety Zone; Green River, Calhoun, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Green River from Mile Marker 61 to 62 in Calhoun, KY. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a power line replacement due to unstable powerline poles. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Ohio Valley.

DATES: This rule is effective from 6 a.m. to 8 p.m. on July 16, 2024 through July 19, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0498 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MST2 Bryan Crane, Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5334, email *Bryan.M.Crane@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the power line poles failed the internal integrity test and prompt action is needed to respond to the potential safety hazards associated with the overhead power lines. It is impracticable to publish an NPRM because we must establish this safety zone by July 16, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potential safety hazards associated with the overhead power lines.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the power line replacement starting July 16, 2024 will be a safety concern for anyone within one (1) mile of the location of the powerline replacement location. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the powerlines are being replaced.

IV. Discussion of the Rule

This rule establishes a safety zone during daylight hours on July 16, 2024 through July 19, 2024. The safety zone will cover all navigable waters within one (1) Nautical Mile of vessels and

machinery being used by personnel to repair the powerline poles between Mile Markers 61 and 62 on the Green River, in Calhoun, KY. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the powerline poles are being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone during the times that powerline work is not being conducted. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only four days that will prohibit entry within 1 nautical mile of the location of the power line crossing, Green River between Mile Markers 61 and 62, specifically 61.5. It is categorically excluded from further review under paragraph L60c of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0498 to read as follows:

§ 165.T08–0498 Safety Zone; Green River, Calhoun, KY.

(a) *Location.* The following area is a safety zone: All navigable waters of the Green River from Mile Marker 61 to 62.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF CH. 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be subject to enforcement each day from 6 a.m. to 8 p.m. on July 16, 2024 through July 19, 2024.

Dated: July 9, 2024.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2024–15355 Filed 7–12–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0697; FRL–12048–01–R1]

Air Plan Approval; Connecticut; Low Emissions Vehicles Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut on December 14, 2015. This SIP revision includes Connecticut's revised regulations for new motor vehicle emission standards. Connecticut updated its motor vehicle emission regulations to adopt California's Advanced Clean Car (ACC) I program that includes California's low emission vehicle (LEV) III criteria pollutant standards and zero-emission vehicle (ZEV) sales requirements through the 2025 model year, and greenhouse gas (GHG) emissions standards that commence in the 2017 model year. Connecticut ensured that its regulations are identical to the California standards for which a waiver has been granted, as required by the Clean Air Act (CAA).

DATES: This rule is effective on August 14, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2017–0697. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100 (Mail code 5–MI), Boston, MA 02109–3912, tel. (617) 918–1628, email *rackauskas.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On January 16, 2018 (83 FR 2097), EPA published a Notice of Proposed Rulemaking (NPRM) proposing approval of Connecticut's amended Section 22(a)–174–36b (Low Emission Vehicle II Program) (LEV II) and the newly adopted Section 22a–174–36c (Low Emission Vehicle III Program) (LEV III) of the Connecticut State Regulations into the Connecticut SIP.[1] Connecticut's ''LEV III regulation'' adopts all of California's ACC I program. California's ACC I program is comprised of what it terms LEV III (which includes criteria pollutants emission standards and greenhouse gas emission standards), and a zero-emissions vehicle sales requirement. Connecticut's emission limits apply to new passenger cars, light-duty trucks, and medium-duty passenger vehicles sold, leased, imported, delivered, purchased, rented, acquired, or received in the State of Connecticut. Connecticut has adopted these rules to reduce emissions of volatile organic compounds (VOC), particulate matter (PM), and nitrogen oxides (NO_X) in accordance with the requirements of the Clean Air Act (CAA), as well as to reduce greenhouse gases. Connecticut has adopted standards that are identical to the California standards that have been issued a waiver by EPA.[2] Other specific requirements of Connecticut's December 14, 2015, SIP revision and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. EPA received both supportive and adverse comments on the proposed Connecticut SIP revision.

II. Response to Comments

EPA received two comments in support of EPA's proposed approval of Connecticut's SIP revision. The first comment stated that EPA, ''correctly determined that the emission standards in Connecticut's SIP revision are identical to the relevant California Standards'' and satisfy the requirements of the CAA. The second comment supported Connecticut's action and encouraged similar action in more states throughout the country. In addition, EPA received comments criticizing some technical aspects of the California Advanced Clean Car I (ACC I) program being adopted by Connecticut under the proposed Connecticut SIP revision.

Under CAA section 209(a), states are generally preempted from either adopting or enforcing emissions standards for new motor vehicles and engines. CAA section 209(b) allows EPA to waive this preemption for the State of California subject to listed criteria. Additionally, under CAA section 177, ''any state which has plan provisions approved under this part [3] may adopt and enforce for any model year standards relating to control of

[1] See EPA's Notice of Proposed Rulemaking for more information on CT's SIP submittal.

[2] EPA issued a waiver of preemption under section 209 of the CAA for California's Advanced Clean Car program (that includes its LEV III and ZEV programs) on January 9, 2013 (78 FR 2211). EPA issued a section 209 waiver for California's LEV II program on April 22, 2003 (68 FR 19811); *see also* 70 FR 22034 (April 28, 2005), 75 FR 41948 (July 30, 2010). EPA reinstated the ACC I waiver on March 14, 2022 (87 FR 14332).

[3] ''This part'' refers to Part D of Title I of the CAA. Part D contains requirements for nonattainment and maintenance areas and states within the Ozone Transport Region as defined in CAA section 184(a).

emissions from new motor vehicles or new motor vehicle engines.''

Specifically, section 177 of the CAA allows a state to adopt the California emissions standards if:

(1) Such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year.

EPA did not receive any comments challenging either of the above criteria. As such, EPA views the comments received as beyond the scope of this action. In this action, EPA is only approving Connecticut's adoption of standards into its SIP under CAA section 177 for which EPA has already granted a waiver of preemption to California (under CAA section 209(b)). To the extent commenters are challenging the ACC I program standards themselves, we note that there is no discretion to modify those standards because under CAA section 177, Connecticut cannot adopt standards that are not identical to the California standards. Therefore, challenges to the ACC I standards themselves are outside the scope of the present action. For example, comments pertaining to battery safety, mining of rare earth elements, and the greenhouse gas footprint of electric cars are beyond the scope of this action because they do not address Connecticut's authority to adopt these standards under Section 177 of the CAA. The standards at issue (LEV III criteria pollutant standards and GHG emission standards, and ZEV sales requirements, that all comprise the ACC I program) are the types of California standards that can be adopted into a state's SIP under the provisions of section 177 of the CAA and are not subject to preemption under section 209 of the CAA, so long as the underlying California standards have been waived under section 209(b) and the other criteria of section 177 have been met. Here, the ACC I standards have been waived by EPA and the other criteria in section 177 have been met.[4]

As explained in the NPRM, EPA proposed approval of Connecticut's SIP revision incorporating California motor vehicle emissions standards into Connecticut's SIP (83 FR 2097). Specifically, the SIP revision adopts California's ACC I program regulations for which EPA had previously granted a waiver of preemption to California under CAA section 209(b) (78 FR 2112; *see also* 87 FR 14332). The ACC I program comprises regulations for ZEV and LEV, which include standards for criteria pollutants for new passenger cars, light-duty trucks, medium-duty passenger vehicles, and certain heavy-duty vehicles for model years 2015 through 2025. The ACC I program also includes GHG emission standards that are applicable to 2017 and subsequent model year vehicles. A complete description of the ACC I program can be found at 78 FR 2114, 2122, 2130–31 and in California Air Resources Board's (CARB) 209(b) waiver request, which is available in the docket for the January 2013 waiver decision, Docket Id. EPA–HQ–OAR–2012–0562.[5]

CAA section 110(a)(1) requires that SIPs provide for the implementation, maintenance, and enforcement of the NAAQS. As noted in the NPRM, Connecticut adopted the ACC I regulations to reduce emissions of volatile organic compounds (VOC), particulate matter (PM), and nitrogen oxides (NO_X), as well as to reduce GHG emissions. NO_X and VOC are precursors of both ozone and PM, and reductions in NO_X and VOC emissions can therefore decrease the concentration of these criteria pollutants.[6] The LEV III, GHG emissions and ACC I passenger vehicle ZEV standards that we are approving into Connecticut's SIP will decrease NO_X and VOC emissions, which, along with other emission control measures in the SIP, will assist the State in achieving the emissions reductions needed to comply with the various nonattainment and maintenance planning requirements of the CAA.[7] As such, we believe that inclusion of the LEV III, GHG, and ZEV portions of the ACC I program in the Connecticut SIP is appropriate under CAA section 110(a)(1).

III. Final Action

EPA is finalizing its proposed approval of Connecticut's December 14, 2015, SIP revision. Specifically, EPA is approving Connecticut's SIP revision adopting California's Advanced Clean Car I program into its SIP, which includes California's low emission vehicle (LEV) III criteria pollutant standards GHG emission standards that commence in the 2017 model year, and zero-emission vehicle (ZEV) sales requirements through the 2025 model year.

EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act, including CAA section 110(l), because it will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Connecticut Department of Energy and Environmental Protection's adoption of the California Advanced Clean Car I program, in Sections 22(a)–174–36b and 22a–174–36c of the Regulations of Connecticut State Agencies, as discussed in sections I. and III. of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those

[4] EPA also did not receive any comments that challenged the approvability of the standards under section 110 of the CAA.

[5] *See also* 87 FR 14332.

[6] In its notice of decision granting a waiver of CAA preemption for the ACC I regulations, EPA discussed the types of air pollution and emission benefits identified by CARB in its ACC I rulemaking associated with its passenger vehicle LEV III, GHG, and ZEV standards (78 FR 2112, 2122). In subsequent documentation, CARB further identified air pollution and emission benefits of its GHG emission and passenger vehicle ZEV standards (both within the ACC I program) that have a connection to a number of NAAQS, including the PM and ozone NAAQS. *See* CARB, Staff Report, Attachment B to Executive Order S–21–010 (''Emissions Benefits of California's Passenger Vehicle GHG Standards''), dated July 2, 2021; *see also* CARB, Staff Report, Appendix A—Criteria Pollutant Emission reductions from California's Zero Emission Vehicle Standards for Model Years 2017–2025, dated July 6, 2021. While CARB's estimates of the criteria pollutant precursor reductions resulting from adoption of these standards are specific to California, CARB's analysis supports the connection between adoption of the GHG standards and resulting criteria pollutant precursor reductions.

[7] Connecticut remains in nonattainment status for the 2008 and 2015 ozone standards, and in maintenance for the 1997 and 2006 $PM_{2.5}$ standards. See EPA's Green Book: *https://www.epa.gov/green-book.*

imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The Connecticut Department of Environmental Protection did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 28, 2024.

David Cash,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(132) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(132) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on December 14, 2015.

(i) Incorporation by reference.

(A) Regulations of Connecticut State Agencies, Regulation 22a–174–36b, ''Low emission vehicles II program,'' amended August 1, 2013.

(B) Regulations of Connecticut State Agencies, Regulation 22a–174–36c, ''Low Emission Vehicle III Program,'' effective August 1, 2013.

(ii) Additional materials.

(A) Letter from the Connecticut Department of Energy and Environmental Protection, dated December 14, 2015, submitting a revision to the Connecticut State Implementation Plan.

■ 3. Section 52.385, is amended in Table 52.385 by:

■ a. adding a third entry for state citation ''22a–174–36b'' before the entry for ''22a–174–36(g)''; and

■ b. adding an entry for state citation ''22a–174–36c'' before the entry for ''22a–174–36(g)''.

The additions read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		**Federal Register** citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–36b	Low Emission Vehicle II Program.	8/1/13	7/15/2024	[Insert **Federal Register** citation].	(c)(132)	Revises LEV II program, places end date on model year vehicles.
22a–174–36c	Low Emission Vehicle III Program.	8/1/13	7/15/2024	[Insert **Federal Register** citation].	(c)(132)	Adopts the LEV III regulation.
*	*	*	*	*	*	*

[FR Doc. 2024–15225 Filed 7–12–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2024–0116; FRL–11972–02–R4]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on the authorization of changes to North Carolina's hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. These changes were outlined in a June 26, 2023, application to the EPA. We have determined that these changes satisfy all requirements needed for final authorization.

DATES: This authorization is effective on September 13, 2024 without further notice unless the EPA receives adverse comment by August 14, 2024. If the EPA receives adverse comment, we will publish a timely withdrawal of this direct final action in the **Federal Register** informing the public that the authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2024–0116, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The EPA encourages electronic submittals and lists all publicly available docket materials electronically at *www.regulations.gov.* If you are unable to make electronic submittals or require alternative access to docket materials, please notify Leah Davis through the provided contacts in the **FOR FURTHER INFORMATION CONTACT** section. Please also contact Leah Davis if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

FOR FURTHER INFORMATION CONTACT: Leah Davis; RCRA Programs and Cleanup Branch; Land, Chemicals and Redevelopment Division; U.S. Environmental Protection Agency; Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8562; fax number: (404) 562–9964; email address: *davis.leah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is the EPA using a direct final action?

The EPA is publishing this action without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action is a routine program change. However, in the ''Proposed Rules'' section of this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule allowing the public an opportunity to comment. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this action, see the **ADDRESSES** section of this document.

If the EPA receives comments that oppose this authorization, we will withdraw this action by publishing a document in the **Federal Register** before the action becomes effective. The EPA will base any further decision on the authorization of the State's program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final action.

II. Why are revisions to State programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in title 40 of the Code of Federal Regulations (CFR), parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time they take effect in unauthorized States. Thus, the EPA will implement those requirements and prohibitions in North Carolina, including the issuance of new permits implementing those requirements, until

the State is granted authorization to do so.

III. What decisions has the EPA made in this action?

North Carolina submitted a complete program revision application (PRA), dated June 26, 2023, seeking authorization of changes to its hazardous waste program corresponding to certain Federal rules promulgated between October 27, 1987, and October 1, 2021 (including HSWA Cluster [1] II (Checklists [2] 39.1, 50.1, and 66.1), RCRA Cluster IV (Checklist 126.1), RCRA Cluster VI (Checklist 152), RCRA Cluster VIII (Checklist 167C.1), RCRA Cluster XIX (Checklists 219 and 221 [3]), RCRA Cluster XX (Checklist 224 [3]), RCRA Cluster XXVII (Checklists 240 and 241), RCRA Cluster XXVIII (Checklist 242), RCRA Cluster XXIX (Checklist 243), and Cluster XXX (Checklist 244). The EPA concludes that North Carolina's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants North Carolina final authorization to operate its hazardous waste program with the changes described in the PRA, and as outlined below in Section VI of this document.

North Carolina has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country, as defined at 18 U.S.C. 1151) and for carrying out the aspects of the RCRA program described in its PRA, subject to the limitations of HSWA, as discussed above.

IV. What is the effect of this authorization decision?

The effect of this decision is that the changes described in North Carolina's PRA will become part of the authorized State hazardous waste program and will therefore be federally enforceable. North Carolina will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA will maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing North Carolina are already effective under State law and are not changed by this action.

V. What has North Carolina previously been authorized for?

North Carolina initially received final authorization on December 14, 1984, effective December 31, 1984 (49 FR 48694), to implement a hazardous waste management program. The EPA granted authorization for changes to North Carolina's program on the following dates: March 25, 1986, effective April 8, 1986 (51 FR 10211); August 5, 1988, effective October 4, 1988 (53 FR 29460); February 9, 1989, effective April 10, 1989 (54 FR 6290); September 22, 1989, effective November 21, 1989 (54 FR 38993); January 18, 1991, effective March 19, 1991 (56 FR 1929); April 10, 1991, effective June 9, 1991 (56 FR 14474); July 19, 1991, effective September 17, 1991 (56 FR 33206); April 27, 1992, effective June 26, 1992 (57 FR 15254); December 12, 1992, effective February 16, 1993 (57 FR 59825); January 27, 1994, effective March 28, 1994 (59 FR 3792); April 4, 1994, effective June 3, 1994 (59 FR 15633); June 23, 1994, effective August 22, 1994 (59 FR 32378); November 10, 1994, effective January 9, 1995 (59 FR 56000); September 27, 1995, effective November 27, 1995 (60 FR 49800); April 25, 1996, effective June 24, 1996 (61 FR 18284); October 23, 1998, effective December 22, 1998 (63 FR 56834); August 25, 1999, effective October 25, 1999 (64 FR 46298); February 28, 2002, effective April 29, 2002 (67 FR 9219); December 14, 2004, effective February 14, 2005 (69 FR 74444); March 23, 2005, effective May 23, 2005 (70 FR 14556); February 7, 2011, effective April 8, 2011 (76 FR 6561); June 14, 2013, effective August 13, 2013 (78 FR 35766); August 24, 2015, effective October 23, 2015 (80 FR 51141); and August 23, 2019, Effective October 10, 2019 (84 FR 54516).

VI. What changes is the EPA authorizing with this action?

North Carolina submitted a complete PRA, dated June 26, 2023, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. This application included changes associated with Checklists 39.1, 50.1, 66.1, 126.1, 152, 167C.1, 219, and 240 through 244 from HSWA Cluster II and RCRA Clusters IV, VI, VIII, XIX, and XXVII through XXX. The EPA has determined, subject to receipt of written comments that oppose this action, that North Carolina's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, the EPA grants final authorization to North Carolina for the following program changes:

Description of Federal requirement	**Federal Register** date and page	Analogous State authority [1]
Checklist 39.1,[2] California List Waste Restrictions	52 FR 41295, 10/27/1987	15 NCAC 13A .0101(e).
Checklist 50.1,[2] Land Disposal Restrictions for First Third Scheduled Wastes.	54 FR 8264, 2/27/1989	15A NCAC 13A .0112(b).
Checklist 66.1,[2] Land Disposal Restrictions; Corrections to the First Third Scheduled Wastes.	55 FR 23935, 6/13/1990	15A NCAC 13A .0112(a).
Checklist 126.1,[2] Testing and Monitoring Activities	59 FR 47980, 9/19/1994	15A NCAC 13A .0112(a).
Checklist 152,[3] Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision.	61 FR 16290, 4/12/1996	15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a); 15A NCAC 13A .0107(a) and (f); 15A NCAC 13A .0108(a)–(d), 15A NCAC 13A .0109(c) and (f); 15A NCAC 13A .0110(b) and (e); 15A NCAC 13A .0111(b); 15A NCAC 13A .0119(b), (c), (d) and (f).
Checklist 167C.1,[2] Land Disposal Restrictions Phase IV—Corrections.	63 FR 31266, 6/8/1998	15A NCAC 13A .0112(f).

[1] A ''cluster'' is a grouping of hazardous waste rules that the EPA promulgates from July 1st of one year to June 30th of the following year.

[2] A ''checklist'' is developed by the EPA for each Federal rule amending the RCRA regulations. The checklists document the changes made by each Federal rule and are presented and numbered in chronological order by date of promulgation.

[3] Although the State requested authorization for Checklists 221 and 224 in its PRA, the EPA is not authorizing North Carolina for these two checklists because they correspond to Federal rules that have been vacated. This vacatur was documented in Checklist 234. The EPA previously authorized North Carolina for Checklist 234 on October 10, 2019 (84 FR 54516).

Description of Federal requirement	**Federal Register** date and page	Analogous State authority [1]
Checklist 219,[4] Revisions to the Definition of Solid Waste, as amended by Checklist 233 (2015 and 2018).	73 FR 64668, 10/30/2008	15A NCAC 13A .0102(b); 15A NCAC 13A .0103(c); 15A NCAC 13A .0106(a) and (f); 15A NCAC 13A .0113(g).
Checklist 240, Safe Management of Recalled Airbags	83 FR 61552, 11/30/2018	15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a); 15A NCAC 13A .0107(a).
Checklist 241, Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine.	84 FR 5816, 2/22/2019	15A NCAC 13A .0106(a) and (d); 15A NCAC 13A .0107(a); 15A NCAC 13A .0109(b); 15A NCAC 13A .0110(a); 15A NCAC 13A .0111(g); 15A NCAC 13A .0112(a) and (e); 15A NCAC 13A .0113(a); 15A NCAC 13A .0119(g) and (g)(1).
Checklist 242, Universal Waste Regulations: Addition of Aerosol Cans.	84 FR 67202, 12/9/2019	15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a); 15A NCAC 13A .0109(b); 15A NCAC 13A .0110(a); 15A NCAC 13A .0112(a); 15A NCAC 13A .0113(a); 15A NCAC 13A .0119(a)–(c).
Checklist 243, Modernizing Ignitable Liquids Determinations	85 FR 40594, 7/7/2020	15A NCAC 13A .0101(e); 15A NCAC 13A .0106(c) and (m).
Checklist 244, Canada Import Export Recovery and Disposal Code Changes.	86 FR 54381, 10/1/2021	15A NCAC 13A .0107(f); 15A NCAC 13A .0109(c); 15A NCAC 13A .0110(b).

Notes

[1] The North Carolina regulatory citations are from the North Carolina Administrative Code (NCAC), effective August 6, 2020.

[2] Checklists 39.1, 50.1, 66.1, 126.1, and 167C.1 amended the underlying Federal rules. North Carolina properly adopted the required changes made by the underlying Federal rules and was previously authorized for those changes.

[3] Most of the provisions contained in Checklist 152 were amended or removed by subsequent checklists, for which the EPA has previously authorized North Carolina.

[4] The EPA authorized North Carolina for Checklist 233, Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule, on October 10, 2019 (84 FR 54516). Checklist 233 included certain provisions from Checklist 219, the 2008 Federal Revisions to the Definition of Solid Waste Rule, as amended on January 13, 2015, and May 30, 2018. For clarity and completeness, the EPA is authorizing Checklist 219, as amended by Checklist 233.

VII. Where are the revised State rules different than the Federal rules?

When revised State rules differ from the Federal rules in the RCRA state authorization process, the EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent States from adopting regulations that are broader in scope than the Federal program, states cannot receive Federal authorization for such regulations, and they are not federally enforceable. There are no State requirements in the program revisions listed in the table above that are considered to be broader in scope than the Federal requirements. The EPA has determined that certain regulations included in North Carolina's program revisions listed in the table above are more stringent than the Federal program. These more stringent requirements will become part of the federally enforceable RCRA program in North Carolina when authorized.

North Carolina's program is more stringent at 15A NCAC 13A .0108(c) and (d), insofar as these provisions require transporters to reconcile significant manifest discrepancies with the waste generator.

North Carolina's program is more stringent at 15A NCAC 13A .0111(b), insofar as these provisions require off-site recycling facilities that receive materials described in 40 CFR 266.70(a) to label containers and tanks holding recyclable materials with the words ''Recyclable Material.''

It should be noted that States cannot receive authorization for certain Federal regulatory functions involving international shipments (*i.e.,* import and export provisions) such as those associated with the Canada Import Export Recovery and Disposal Code Changes Rule (Checklist 244) and the Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision Rule (Checklist 152). Although North Carolina has adopted these rules to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references. *See* 15A NCAC 13A .0101(b).

VIII. Who handles permits after the authorization takes effect?

When final authorization takes effect, North Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits that the EPA issued prior to the effective date of authorization until they expire or are terminated. The EPA will not issue any new permits or new portions of permits for the provisions listed in the table above after the effective date of the final authorization. The EPA will continue to implement, and issue permits for HSWA requirements for which North Carolina is not yet authorized. The EPA has the authority to enforce State-issued permits after the State is authorized.

IX. How does today's action affect Indian country in North Carolina?

North Carolina is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Indian lands associated with the Eastern Band of Cherokee Indians. Therefore, this action has no effect on Indian country. The EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

X. What is codification and is the EPA codifying North Carolina's hazardous waste program as authorized in this action?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. The EPA is not codifying the authorization of North Carolina's revisions at this time. However, the EPA reserves the ability to amend 40 CFR part 272, subpart II, for the authorization of North Carolina's program changes at a later date.

XI. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional

requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 14094 (88 FR 21879, April 11, 2023) regulatory action because actions such as the authorization of North Carolina's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high, and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final action will be effective September 13, 2024.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: June 28, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–15117 Filed 7–12–24; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 89, No. 135
Monday, July 15, 2024

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1222

[Doc. No. AMS–SC–23–0080]

Paper and Paper-Based Packaging Promotion, Research and Information Order; Clarifying Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes multiple clarifying amendments to the Paper and Paper-Based Packaging Promotion, Research and Information Order (Order). The amendments include revising the definition of importer; adding a definition for partnership; clarifying the nominations process; clarifying language about in person and electronic voting for any Board meetings; updating the timing of financial reporting; and revising requirements for when exemptions can be requested. These actions would modify language in the Order to bring it up to date with current industry practices.

DATES: Comments must be received by August 14, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments may be mailed to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or submitted electronically by Email: *SM.USDA.MRP.AMS.MDDComment@usda.gov;* or via Federal e-rulemaking portal at *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above. A plain language summary of this proposed rule is available at *https://www.regulations.gov* in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Samantha Mareno, Agricultural Marketing Specialist, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1406–S, STOP 0244, Washington, DC 20250–0244; Telephone: (720) 827–4907; or Email: *Samantha.Mareno@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule affecting the Order (7 CFR part 1222) is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425).

Executive Orders 12866, 13563 and 14094

AMS is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed rule is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under section 6 of the Executive Order.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this proposed rule on Indian Tribes and determined that this proposed rule would not have Tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with Tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations will be shared during an upcoming quarterly call, and Tribal leaders will be informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regard to these proposed changes to the Order.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act (7 U.S.C. 7418), a person subject to an order may file a written petition with the U.S. Department of Agriculture (USDA), stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

Under the Order, which became effective on January 23, 2014, the Paper and Packaging Board (Board), with oversight by USDA, administers a nationally coordinated program of research, promotion and information designed to strengthen the paper and paper-based packaging industry. The program covers four types of paper and paper-based packaging—printing and writing paper (used to make products for printing, writing and other communication purposes), kraft packaging paper (used for products like grocery bags and sacks), containerboard (used to make corrugated boxes, shipping containers and related products), and paperboard (used for food and beverage packaging, tubes, and other miscellaneous products). The program is financed by assessments on domestic manufacturers and importers of paper and paper-based packaging.

This proposed rulemaking would make multiple clarifying amendments to the Order. These amendments include revising the definition of importer; adding a definition for partnership; clarifying the nomination process; clarifying language about in person and electronic voting for any Board meetings; updating the timing of financial reporting; and revising requirements concerning when exemptions may be requested. The Board, which is composed of domestic manufacturers from across the country and importers, unanimously recommended the proposed changes to the Order on August 19, 2023. This action would modify language in the Order to bring it up to date with current industry practices.

Board Recommendation To Revise Order

In subpart A of the Order, several sections would be revised to clarify terms for the Board and the paper and paper-based packaging industry. Section 1222.7 currently defines fiscal period and marketing year. Proposed section 1222.7 would revise fiscal period to fiscal year as the term is better understood by the industry. The definition of importer in § 1222.8 would be revised to further clarify that importers are persons who import paper and paper-based packaging from outside the United States, that is subsequently released from custody by U.S. Customs and Border Protection (Customs) and introduced into the stream of commerce into the United States. Specifically, those persons are included who hold title of the foreign manufactured paper and paper-based packaging. The proposed revision is similar to the current definition of eligible importer in § 1222.101 (f) of Subpart B—Referendum Procedures.

Sections 1222.12 and 1222.13 currently include the term produce and producer respectively in the definition of manufacture and manufacturer. The term produce and producer are not used in the paper and paper-based packaging industry. Therefore, this proposed rule would remove these terms from the definition of manufacture and manufacturer.

Lastly, a new term for partnership would be added at § 1222.19 to state that a partnership includes, but is not limited to, spouses and joint ventures. This change is intended to clarify who is responsible for paying assessments. With this change, the existing sections 1222.19 through 1222.29 would be renumbered.

Section 1222.41 currently outlines the Board nominations and appointments process. Section 1222.41(c)(1) would be updated to clarify the process for conducting outreach and specifically issue a call for nominations to all current manufacturers and importers who have paid assessments during the prior fiscal year. Furthermore, section 1222.41(c)(4) and (c)(5) would be amended to remove repetitive language. Lastly, section 1222.41(c)(10) would be changed to specify that no two members shall be employed by a single manufacturer or importer that pays assessments under the Order to avoid confusion as to who can serve on the Board.

Section 1222.43(a) allows the Secretary to remove a Board member or employee for failure or refusal to perform their duties, per the Board's recommendation. This would be revised to remove the employee clause to be consistent with language in other research and promotion orders.

Section 1222.44 outlines the Board's procedures for conducting Board meetings. Section 1222.44(c) currently states that votes shall be cast in person at an assembled meeting. Additionally, section 1222.44 (d) allows for other means of voting in lieu of voting at an assembled meeting. Both sections would be revised to include options for electronic voting, or other means.

Section 1222.47 outlines prohibited activities for the Board. Section 1222.47(c) currently states no program, plan or project including advertising shall be false, misleading, or disparaging to another agriculture commodity. To be consistent in writing style, the proposed language would be modified to state any program, plan or project including advertising that is false, misleading, or disparaging to another agriculture commodity. This section would be updated to ensure clarity in wording.

Section 1222.50(i) outlines the operating monetary reserve for the Board and states that the funds in the reserve may not exceed one fiscal year's budget of expenses. This would be revised to increase the funds in the reserve so they may not exceed two fiscal years, which is consistent with other research and promotion orders.

Section 1222.51(b) describes when financial statements are to be submitted to the Department. The current timeframe is 30 days after the time period to which it applies, which is too restrictive because the Board reports financial statements on a quarterly basis. Therefore, this paragraph would be updated to specify that the financial statements are to be submitted quarterly and no later than 70 days after the period to which it applies.

Section 1222.51(c) refers to the annual financial statement that is submitted to the Department. Currently, the annual financial statement is due to the Department within 90 days after the end of the fiscal year. The Board has had difficulty in meeting this short deadline. Therefore, this rule would extend the timeframe to no later than 120 days to allow the Board more time to submit the statement to the Department.

Section 1222.52(e) currently states that importers of paper and paper-based packaging shall pay assessments through Customs to the Board. Customs does not currently collect import assessments for the Board and therefore, paragraph (e) would be revised by deleting ''through Customs'', instead stating that each importer shall pay their assessment to the Board.

Section 1222.52(f) would also be revised by deleting the current language stating Customs collects assessments. Since Customs does not collect the assessment, the paragraph would be revised to state that each importer is responsible for paying assessments directly to the Board.

Section 1222.53(a)(1) currently specifies the minimum quantity necessary to be eligible for an exemption from assessments and requires manufacturers to apply for an exemption prior to the start of the marketing year. The rule would remove this requirement, allowing them to apply for an exemption at any time during a marketing year, not just before the year starts.

Section 1222.53(a)(2) (iii) provides that importers' assessments are collected by Customs and the Board shall refund the importer who has filed for exemption. Because Customs doesn't

collect assessments, this section would be updated to reflect that the importer would pay the Board directly.

Section 1222.53(a)(5) currently details how the quantity of paper and paper-based packaging counts towards an exemption. This paragraph would be revised to ensure that in determining whether a manufacturer or import qualifies for the exemption, the combined quantity of all paper and paper-based packaging manufactured or imported during a marketing year shall count towards the 100,000 short ton exemption.

Section 1222.81(2) refers to the frequency of referenda and outlines the criteria for continuation. This section would be updated to clarify that only eligible domestic manufacturers or eligible importers are included in the referendum voting. This change does not change who can vote and does not change voting restrictions.

Section 1222.82(b) currently states that the Secretary has the right to suspend or terminate the program whenever it is favored by the industry. This section would be updated to make the language used more concise to avoid confusion by the industry.

Definitions in Section 1222.101 would be updated to be consistent with terms defined in Subpart A. Specifically, paragraph (e) currently includes *producer* in the definition for *eligible domestic manufacturer.* This section would be revised to remove the word *producer.* Paragraph (i) currently includes the term *produce* in the definition of *manufacture* and would be revised to remove the term *produce* from the definition.

Lastly, section 1222.102(a) currently outlines the voting eligibility of domestic manufacturers and importers. This section would be revised to include clarifying language to avoid confusion in the eligibility.

Initial Regulatory Flexibility Act Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale of businesses subject to such action so that small businesses will not be disproportionately burdened. Manufacturers and importers would be considered agricultural service firms. The Small Business Administration defines small agricultural service firms as those having annual receipts of no more than $30 million (13 CFR part 121).

According to the Board, there are approximately 47 manufacturers in the United States that manufacture the types of paper and paper-based packaging covered under the Order. Using an average price of $1,350 per short ton,[1] a manufacturer who manufactures less than 22,220 short tons of paper and paper-based packaging per year would be considered a small entity. The Board estimated that no entity manufactured less than 22,220 short tons in 2022; thus, no domestic manufacturers would be considered small businesses.

Based on Customs data, there were 3,272 importers of paper and paper-based packaging in 2022. Of these, 40 importers, or 1 percent, had annual receipts of more than $30 million of paper and paper-based packaging. Thus, the majority of importers would be considered small entities.

This proposed rule would make multiple clarifying changes to the Order. The changes include revising the definition of importer; adding a definition for partnership; clarifying the nominations process; clarifying language about in person and electronic voting for any Board meetings; updating the timing of financial reporting; and revising requirements concerning when exemptions will be requested.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic manufacturers and importers of paper and paper-based packaging.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

[1] No domestic market pricing information for paper and paper-based packaging was publicly available; instead, average prices were estimated using export data from the U.S. Census Bureau.

Regarding alternatives, the Board considered not making the clarifying changes to the Order and leaving it as it is currently. The Board decided against leaving the Order unchanged as confusion would continue and potentially worsen over time. Therefore, that alternative was rejected.

Regarding outreach efforts, the Board determined that making these proposed changes would clarify the issues and answer questions that have arisen over the last eight years and would help resolve similar questions in the future. This proposal was discussed by the Board in June and November 2022, and the full Board unanimously recommended the changes on August 19, 2023. AMS has performed this initial RFA analysis regarding the impact of this action on small entities and invites comments concerning potential effects of this action.

While this proposed rule as set forth below has not yet received the approval of AMS, it has been determined that it is consistent with and would effectuate the purposes of the Order. A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1222

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Paper and paper-based packaging promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1222 as follows:

PART 1222—PAPER AND PAPER-BASED PROMOTION, RESEARCH AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1222 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. In § 1222.7, revise to read as follows:

§ 1222.7 Fiscal year and marketing year.

Fiscal year and marketing year means the 12-month period ending on December 31 or such other period as recommended by the Board and approved by the Secretary.

■ 3. In § 1222.8, revise to read as follows:

§ 1222.8 Importer.

Importer means any person who imports paper and paper-based packaging from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person who manufactures paper and paper-based packaging outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such paper and paper-based packaging. Importation occurs when paper and paper-based packaging manufactured outside of the United States is released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-manufactured paper and paper-based packaging immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of paper and paper-based packaging from Customs when such paper and paper-based packaging is entered or withdrawn for use in the United States.

■ 4. In § 1222.12, revise to read as follows:

§ 1222.12 Manufacture.

Manufacture means the process of transforming pulp into paper and paper-based packaging.

■ 5. In § 1222.13, revise to read as follows:

§ 1222.13 Manufacturer.

Manufacturer means any person who manufactures paper and paper-based packaging in the United States.

§§ 1222.19 through 1222.29 [Redesignated as §§ 1222.20 through 1222.30]

■ 6. Redesignate §§ 1222.19 through 1222.29 as §§ 1222.20 through 1222.30, respectively.

■ 7. Add new § 1222.19 to read as follows:

§ 1222.19 Partnership.

Partnership includes, but is not limited to:

(a) Spouses who have title to, or leasehold interest in, a paper and paper-based packaging manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(b) So called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, that results in the manufacturing or importation of paper and paper-based packaging and the authority to transfer title to the paper and paper-based packaging so manufactured or imported.

■ 8. In § 1222.41, revise paragraphs (c)(1), (c)(4), (c)(5) and (c)(10) to read as follows:

§ 1222.41 Nominations and appointments.

* * * * *

(c) * * *

(1) The Board shall issue a call for nominations and conduct outreach to all current manufacturers and importers who paid assessments during the prior fiscal year. Manufacturers and importers may submit nominations to the Board;

* * * * *

(4) For domestic seats allocated by region, domestic manufacturers must manufacture paper and paper-based packaging in the region for which they seek nomination. Nominees that manufacture in both regions may seek nomination in one region of their choice;

(5) Nominees that are both a manufacturer and an importer may seek nomination to the board either as a manufacturer or as an importer so long as they meet the qualifications;

* * * * *

(10) No two members shall be employed by a single manufacturer or importer that pays assessments under this Order; and,

* * * * *

■ 9. In § 1222.43, revised paragraph (a) to read as follows:

§ 1222.43 Removal and vacancies.

(a) The Board may recommend to the Secretary that a member be removed from office if the member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or willful misconduct. If the Secretary determines that any person appointed under this subpart consistently fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this subpart may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

* * * * *

■ 10. In § 1222.44, revise paragraphs (c) and (d) to read as follows:

§ 1222.44 Procedure.

* * * * *

(c) The Board and related committees may conduct meetings by any means of communication available, electronic or otherwise, that effectively assembles the required participants and facilitates open communication. Eligible participants may vote by any means of communication available, electronic or otherwise; provided that votes cast are verifiable and that a quorum and other procedural requirements are met.

(d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a majority of members (unless a two-thirds majority is required under the Order) by any means of communication available, electronic or otherwise. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at an assembled meeting. All votes shall be recorded in Board minutes.

* * * * *

■ 11. In § 1222.47, revise paragraph (c) to read as follows:

§ 1222.47 Prohibited activities.

* * * * *

(c) Any program, plan or project including advertising that is false, misleading, or disparaging to another agricultural commodity. Paper and paper-based packaging of all geographic origins shall be treated equally.

■ 12. In § 1222.50, revise paragraph (i) to read as follows:

§ 1222.50 Budget and expenses.

* * * * *

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in any reserve so established: Provided, that, the funds in the reserve do not exceed two fiscal year's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

* * * * *

■ 13. In § 1222.51, revise paragraphs (b) and (c) to read as follows:

§ 1222.51 Financial statements.

* * * * *

(b) Each quarterly financial statement shall be submitted to the Department no later than 70 calendar days after the period to which it applies.

(c) The Board shall submit to the Department an audited annual financial statement no later than 120 calendar days after the end of the fiscal year to which it applies.

■ 14. In § 1222.52, revise the introductory text of paragraph (e), and paragraph (f) to read as follows:

§ 1222.52 Assessments.

* * * * *

(e) Each importer of paper and paper-based packaging shall pay to the Board an assessment on the paper and paper-based packaging imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTSUS) number listed in the following table. In the event that any HTSUS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the paper and paper-based packaging involved, assessments will continue to be collected based on the new number.

* * * * *

(f) Each importer is responsible for paying the assessment directly to the Board within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported.

* * * * *

■ 15. § 1222.53, revise paragraphs (a)(1), (2)(iii) and (5) to read as follows:

§ 1222.53 Exemption from assessment.

(a) *Minimum quantity exemption.* (1) Manufacturers that manufacture less than 100,000 short tons of paper and paper-based packaging in a marketing year are exempt from paying assessments. Such manufacturers must apply to the Board, on a form provided by the Board, for a certificate of exemption. This is an annual exemption and manufacturers must reapply each year. Such manufacturers shall certify that they will manufacture less than 100,000 short tons of paper and paper-based packaging during the marketing year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past manufacturing data to support the exemption request. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer. It is the responsibility of the manufacturer to retain a copy of the certificate of exemption.

(2) * * *

(iii) The Board shall refund to such importers considered exempt assessments that the importer paid to the Board no later than 60 calendar days after the Board receives such assessments. The Board will stop refund of assessments to such importers who during the marketing year import more than 100,000 short tons of paper and paper-based packaging. These importers will be notified accordingly. No interest shall be paid on the assessments collected by the Board.

* * * * *

(5) In calculating whether a manufacturer or importer qualifies for an exemption, the combined quantity of all paper and paper-based packaging manufactured or imported by the manufacturer or importer during a marketing year shall count towards the 100,000 short-ton exemption.

* * * * *

■ 16. In § 1222.81, revise paragraphs (b)(2) to read as follows:

§ 1222.81 Referenda.

* * * * *

(b) * * *

(2) Not later than seven years after this Order becomes effective and every seven years thereafter, to determine whether manufacturers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of manufacturers and importers voting in the referendum who, during a representative period determined by the Secretary, are each an eligible domestic manufacturer or an eligible importer and who also represent a majority of the volume of paper and paper-based packaging represented in the referendum;

* * * * *

■ 17. In § 1222.82, revise paragraph (b) to read as follows:

§ 1222.82 Suspension or termination.

* * * * *

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal year whenever the Secretary determines that its suspension or termination is favored by a majority of manufacturers and importers voting in the referendum who, during a representative period determined by the Secretary, are each an eligible domestic manufacturer or an eligible importer and who also represent a majority of the volume of paper and paper-based packaging represented in the referendum;

* * * * *

■ 18. In § 1222.101, revise paragraph (e) and (i) to read as follows:

Subpart B—Referendum Procedures

§ 1222.101 Definitions.

* * * * *

(e) Eligible domestic manufacturer means any person who is currently a domestic manufacturer and who manufactured 100,000 short tons or more of paper and paper-based packaging during the representative period.

* * * * *

(i) Manufacture means the process of transforming pulp into paper and paper-based packaging.

* * * * *

■ 19. In § 1222.102, revise paragraph (a) to read as follows:

§ 1222.102 Voting.

(a) Each eligible domestic manufacturer and importer of paper and paper-based packaging shall be entitled to cast only one ballot in the referendum. However, each domestic manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture paper and paper-based packaging, in which more than one of the parties is a domestic manufacturer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic manufacturer or importer's share of ownership.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–15138 Filed 7–12–24; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 100

[NRC–2024–0110]

Draft Regulatory Guides: Design-Basis Floods for Nuclear Power Plants and Guidance for Assessment of Flooding Hazards Due to Water Control Structure Failures and Incidents

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guides; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment two related draft Regulatory Guides (DG) namely DG–1290, Revision 1, ''Design-Basis Floods for Nuclear Power Plants,'' proposed Revision 3 of Regulatory Guide (RG) 1.59 of the same name and DG–1417, ''Guidance for Assessment of Flooding Hazards due to Water Control Structure Failures and Incidents,'' proposed new RG 1.256. DG–1290 provides guidance for applicants for new nuclear power plants (NPPs) on acceptable methods for evaluating design-basis floods and DG–1417 provides guidance for applicants on flooding hazards due to failure or other incidents at man-made water

control structures including, but not limited to, dams and levees.

DATES: Submit comments by August 14, 2024. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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–2024–0110. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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: Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–415–3317; email: *Edward.O'Donnell@nrc.gov;* Joseph Kanney, Office of Nuclear Regulatory Research, telephone: 301–415–1920; email: *Joseph.Kanney@nrc.gov;* and Kenneth See, Office of Nuclear Reactor Regulation, telephone: 301–415–1508; email: *Kenneth.See@nrc.gov.* All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0110 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–2024–0110.
- *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 Web-based ADAMS 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–2024–0110 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. Additional Information

The NRC is issuing for public comment two related DGs in the NRC's ''Regulatory Guide'' series, namely DG–1290 and DG–1417. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

DG–1290 was previously released for public comment on February 23, 2022, as announced in the **Federal Register** (87 FR 10260). The public comment period ended on April 11, 2022. That version of DG–1290 can be found in ADAMS under Accession No. ML19289E561 and the response to public comments can be found at ADAMS Accession No. ML23320A026. DG–1290, Revision 1 (ADAMS Accession No. ML23320A025) is being issued for a second round of comments due to changes reflecting public comments and proposed referencing of a complementary new guide, DG–1417 (RG 1.256, Revision 0) ''Guidance for Assessment of Flooding Hazards Due to Water Control Structure Failures and Incidents.'' DG–1417 will be released for comment in conjunction with DG–1290, Revision 1.

DG–1417 is a proposed new RG, RG 1.256, of the same name, and is temporarily identified by its task number, DG–1417 (ADAMS Accession No. ML22278A110). It was developed to provide guidance to applicants for new NPPs on acceptable methods for evaluating design-basis flooding hazards due to failure or other incidents at man-made water control structures including, but not limited to, dams and levees. If finalized, RG 1.256 would formally incorporate interim staff guidance (ISG) ''Guidance for Assessment of Flooding Hazards Due to Dam Failure'' (JLD–ISG–2013–01) (ADAMS Accession No. ML13151A153) into NRC's regulatory guidance framework. ISGs are meant to be withdrawn after their immediate purpose has been fulfilled or integrated formally into the NRC's regulatory guidance framework. If DG–1417 is finalized as RG 1.256, JLD–ISG–2013–01 will be withdrawn. The staff is also issuing for public comment a draft regulatory analysis for DG–1417 (ADAMS Accession No. ML22278A111). The staff developed the regulatory analysis to assess the value of issuing or revising a RG, as well as alternative courses of action. A regulatory analysis for DG–1290 was released for comment on February 23, 2022, and although no comments were received it is available for comment and can be found in ADAMS under Accession No. ML12121A020.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Proposed Rules'' section of the **Federal Register** to comply with publication requirements under chapter I of title 1 of the *Code of Federal Regulations* (CFR).

III. Backfitting, Forward Fitting, and Issue Finality

If finalized, the NRC staff may use RG 1.256 as a reference in its regulatory processes, such as licensing, inspection, or enforcement. However, the NRC staff does not intend to use the proposed guidance in RG 1.256 to support NRC staff actions in a manner that would constitute backfitting as that term is defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' (ADAMS Accession No. ML18093B087); nor does the NRC staff intend to use the proposed guidance to affect the issue finality of an approval under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The staff also does not intend to use the proposed guidance to support NRC staff actions in a manner that constitutes forward fitting as that term is defined and described in MD 8.4. If a licensee believes that the NRC is using this proposed RG in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a backfitting or forward fitting appeal with the NRC in accordance with the process in MD 8.4.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: July 10, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2024–15479 Filed 7–12–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1884; Project Identifier AD–2023–00948–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) 2023–08–04, which applies to certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. AD 2023–08–04 requires a detailed visual inspection of all door 1 and door 3 lavatory and galley potable water systems for any missing or incorrectly installed clamshell couplings, and applicable on-condition actions. Since the FAA issued AD 2023–08–04, Boeing has discovered that some couplings did not have the required safety strap and has developed a design solution that replaces the couplings with couplings that have safety straps to address the unsafe condition. This proposed AD would retain the requirements of AD 2023–08–04 and require a detailed inspection of all clamshell couplings for the presence and correct installation of safety straps at door 1 and door 3 lavatories and galleys with a potable water system, and applicable on-condition actions. The AD would also prohibit the installation of affected parts at inspection locations and remove Model 787–10 airplanes from the applicability. 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 August 29, 2024.

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–2024–1884; 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 NPRM, 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. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2024–1884.

FOR FURTHER INFORMATION CONTACT: Brandon Lucero, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *Brandon.Lucero@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 to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–1884; Project Identifier AD–2023–00948–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 Brandon Lucero, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *Brandon.Lucero@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 2023–08–04, Amendment 39–22419 (88 FR 33823, May 25, 2023) (AD 2023–08–04), for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. AD 2023–08–04 was prompted by reports of a loss of water pressure during flight and water leaks that affected multiple pieces of electronic equipment. AD 2023–08–04 requires a detailed visual inspection of all door 1 and door 3 lavatory and galley potable water systems for any missing or incorrectly installed clamshell couplings, and applicable on-condition actions. The agency issued AD 2023–08–04 to address incorrectly installed or missing lavatory and galley clamshell couplings that could lead to water leaks and water migration to critical flight equipment, which may affect the continued safe flight and landing of the airplane.

Actions Since AD 2023–08–04 Was Issued

The FAA issued AD 2023–08–04 as an interim action and indicated that the FAA might consider additional rulemaking. AD 2023–08–04 requires an inspection of the potable water clamshell couplings, regardless of the safety-strap configuration. Boeing has determined that some clamshell couplings do not have the required safety straps and has since developed procedures to ensure that affected clamshell couplings have correctly installed safety straps. The FAA has now determined that further rulemaking is necessary, and this proposed AD follows from that determination.

Model 787–10 airplanes, which are all delivered with the safety-strap coupling, are no longer subject to the unsafe condition, and do not need the new proposed inspections. Therefore, those airplanes are not included in the applicability.

The FAA is proposing this AD to prevent a loss of water pressure during flight and water leaks that can affect multiple pieces of electronic equipment. The unsafe condition, if not addressed, could lead to water migration to critical flight equipment, which may affect the continued safe flight and landing of the airplane.

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.

Related Material Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023. This material specifies procedures for a detailed inspection for the presence and correct installation of safety straps at the clamshell couplings at door 1 and door 3 lavatories and galleys with a potable water system. The material also specifies applicable on-condition actions including correcting the installation of the safety strap, replacing any clamshell coupling that does not have a strap with a new clamshell coupling that has a safety strap, and performing a water leak test.

This proposed AD would also require Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, which the Director of the Federal Register approved for incorporation by reference as of June 29, 2023 (88 FR 33823, May 25, 2023).

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**.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2023–08–04. 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. This proposed AD would also prohibit the installation of affected parts at inspection locations and remove Model 787–10 airplanes from the applicability. For information on the procedures and compliance times, see this material at regulations.gov under Docket No. FAA–2024–1884.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 165 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
Clamshell coupling inspection, per lavatory or galley (retained actions from AD 2023–08–04).	1 work-hour × $85 per hour = $85.	$0	$85	$14,025
Safety strap inspection, per lavatory/galley (new proposed action).	2 work-hours × $85 per hour = $170, per lavatory/galley.	0	$170, per lavatory/galley	28,050

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Correct installation for clamshell coupling with safety strap that was installed incorrectly.	0.25 work-hour × $85 per hour = $21.25.	$0	$21.25
Install clamshell coupling 14C34–08C	0.25 work-hour × 85 per hour = 21.25	267	288.25
Install clamshell coupling 14C33–08	0.25 work-hour × 85 per hour = 21.25	47	68.25
Leak test	0.5 work-hour × 85 per hour = 42.50 ..	0	42.50

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) 2023–08–04, Amendment 39–22419 (88 FR 33823, May 25, 2023), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2024–1884; Project Identifier AD–2023–00948–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 29, 2024.

(b) Affected ADs

This AD replaces AD 2023–08–04, Amendment 39–22419 (88 FR 33823, May 25, 2023) (AD 2023–08–04).

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, as specified in Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/waste.

(e) Unsafe Condition

This AD was prompted by reports of a loss of water pressure during flight and water leaks that affected multiple pieces of electronic equipment. The FAA is issuing this AD to prevent a loss of water pressure during flight and water leaks that can affect multiple pieces of electronic equipment. The unsafe condition, if not addressed, could lead to water leaks and water migration to critical flight equipment, which may affect the continued safe flight and landing of the airplane.

(f) Compliance

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

(g) Retained Clamshell Coupling Inspection, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2023–08–04, with no changes. Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by paragraph (g) of this AD can be found in Boeing Alert Service Bulletin B787–81205–SB380021–00, Issue 001, dated August 12, 2022, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022.

(h) Retained Exception to Service Information Specifications, With No Changes

This paragraph restates the exceptions of paragraph (h) of AD 2023–08–04, with no changes. Where the Compliance Time columns of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, refer to the Issue 001 date of Requirements Bulletin B787–81205–SB380021–00 RB, this AD requires using June 29, 2023 (the effective date of AD 2023–08–04).

(i) Retained Credit for Previous Actions, With No Changes

This paragraph restates paragraph (i) of AD 2023–08–04, with no changes. This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before June 29, 2023 (the effective date of AD 2023–08–04), using Multi Operator Message MOM–MOM–21–0554–01B, dated December 14, 2021 (for lavatory inspections); and MOM–MOM–22–0229–01B, dated April 29, 2022 (for galley inspections).

(j) New Required Actions

For airplanes identified in Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023: Except as specified by paragraph (k) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023, do all applicable actions identified in,

and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023.

Note 2 to paragraph (j): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB250299–00, Issue 001, dated July 31, 2023, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023.

(k) New Exception to Service Information Specifications

Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023, use the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB250299–00 RB,'' this AD requires using the effective date of this AD.

(l) Terminating Action for Clamshell Coupling Inspection

For the airplanes identified in Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023: Accomplishment of the actions required by paragraph (j) of this AD terminates the requirements of paragraph (g) of this AD.

(m) Parts Installation Prohibition

As of the effective date of this AD, no person may install a clamshell coupling, part number (P/N) 14C02–08C or P/N AS1655A08, at inspection locations where P/N 14C02–08C or P/N AS1655A08 was replaced with P/N 14C34–08C or P/N 14C33–08 on any airplane in accordance with Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023.

(n) 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 (o)(1) of this AD. Information may be emailed to: *AMOC@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) 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.

(4) AMOCs approved for AD 2023–08–04 are approved as AMOCs for the corresponding provisions of Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, that are required by paragraph (g) of this AD.

(o) Related Information

(1) For more information about this AD, contact Brandon Lucero, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *Brandon.Lucero@faa.gov*.

(2) Material identified in this AD that is not incorporated by reference is available at the addresses specified in paragraph (p)(5) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information 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) Boeing Alert Requirements Bulletin B787–81205–SB250299–00 RB, Issue 001, dated July 31, 2023.

(ii) [Reserved]

(4) The following material was approved for IBR on June 29, 2023 (88 FR 33823, May 25, 2023).

(i) Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022.

(ii) [Reserved]

(5) 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*.

(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 July 2, 2024.

Suzanne Masterson,

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

[FR Doc. 2024–15235 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1689; Project Identifier AD–2024–00109–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: The FAA is correcting a notice of proposed rulemaking (NPRM) that was published in the **Federal Register**. The NPRM proposed to issue an airworthiness directive (AD) that would apply to all The Boeing Company Model 767–200, –300, and –300F series airplanes. As published, the docket number referenced throughout the NPRM is incorrect. This document corrects that error. In all other respects, the original document remains the same; however, for clarity, the FAA is publishing the entire proposed rule in the **Federal Register**.

DATES: The last date for submitting comments on the NPRM (89 FR 51856, June 20, 2024) remains August 5, 2024.

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–2024–1689; 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 ''proposed rule; correction,'' 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 service information, 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*. It is also available at *regulations.gov* under Docket No. FAA–2024–1689.

FOR FURTHER INFORMATION CONTACT: Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@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 to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–1689; Project Identifier AD–2024–00109–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 Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@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 an NPRM (89 FR 51856, June 20, 2024) that would apply to all The Boeing Company Model 767–200, –300, and –300F series airplanes. The NPRM was prompted by a report of a main landing gear (MLG) collapse event following maintenance where a grinder was operating outside of its input parameters, resulting in possible heat damage to the outer cylinder of the MLG. The NPRM proposed to require replacing any affected outer cylinders. The FAA is proposing this AD to address any heat damage to the outer cylinder of the landing gear. The unsafe condition, if not addressed, could result in the inability of a principal structural element to sustain limit load, gear collapse resulting in loss of control and potential for off runway excursion.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 767–32A0253 RB, dated February 6, 2024. This service information specifies procedures for performing a check of maintenance records or performing an inspection of the left and right MLG outer cylinders for any affected part numbers and serial numbers and replacing affected cylinders. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Need for the Correction

As published, the docket number referenced throughout the NPRM is incorrect. The NPRM incorrectly references ''Docket No. FAA–2024–1688.'' The correct docket number is ''Docket No. FAA–2024–1689.''

Although no other part of the preamble or regulatory information has been corrected, for clarity the FAA is publishing the entire proposed rule in the **Federal Register**.

The comment due date of the NPRM remains August 5, 2024.

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 [Corrected]

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

The Boeing Company: Docket No. FAA–2024–1689; Project Identifier AD–2024–00109–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 5, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, –300, and –300F series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by a report of a main landing gear (MLG) collapse event following maintenance where a grinder was operating outside of its input parameters, resulting in possible heat damage to the outer cylinder of the MLG. The FAA is issuing this AD to address any heat damage to the outer cylinder of the landing gear. The unsafe condition, if not addressed, could result in the inability of a principal structural element to sustain limit load, gear collapse resulting in loss of control and potential for off runway excursion.

(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 767–32A0253 RB, dated February 6, 2024, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 767–32A0253 RB, dated February 6, 2024.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 767–32A0253, dated February 6, 2024, which is referred to in Boeing Alert Requirements Bulletin 767–32A0253 RB, dated February 6, 2024.

(h) Exceptions to Service Information Specifications

Where the Boeing Recommended Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert

Requirements Bulletin 767–32A0253 RB, dated February 6, 2024, uses the phrase ''the Original Issue date of Requirements Bulletin 767–32A0253 RB,'' this AD requires using the effective date of this AD.

(i) 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 (j)(1) of this AD. Information may be emailed to: *AMOC@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) 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.

(j) Related Information

(1) For more information about this AD, contact Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@faa.gov*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 767–32A0253 RB, dated February 6, 2024.

(ii) [Reserved]

(3) For service information 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. 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 July 8, 2024.

Peter A. White,

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

[FR Doc. 2024–15308 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2024–0379]

RIN 1625–AA09

Drawbridge Operation Regulation; Miami River, North Fork, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove the operating schedule that governs the FDOT Railroad Bridge, across the Miami River, North Fork, mile 5.3, at Miami, FL. The railroad bridge is being replaced with a fixed bridge. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before August 14, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0379 using Federal Decision Making Portal at *https://www.regulations.gov*.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone 571–607–5951, email *Jennifer.N.Zercher@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
FL Florida
FDOT Florida Department of Transportation

II. Background, Purpose and Legal Basis

The FDOT Railroad Bridge, across the Miami River, North Fork, mile 5.3, at Miami, FL, is a single bascule bridge with a 6-foot vertical clearance at mean high water in the closed position. The normal operating schedule is set forth in 33 CFR 117.307.

FDOT applied for and received a Coast Guard Bridge Permit to replace the existing moveable railroad bridge with a fixed railroad bridge. FDOT has requested the drawbridge operation regulation be removed and the bridge be allowed to remain closed to navigation in anticipation of phase one of the bridge replacement project, converting the moveable bridge to a fixed bridge, beginning August 2024.

The Miami River, under the jurisdiction of the U.S. Army Corps of Engineers, is a federal navigation project channel. On December 21, 2020, the U.S. Congress approved the deauthorization of navigational rights for the portion of the Miami River between the FDOT Railroad Bridge and the S–26 SFWMD structure with the Miami Rivel Canal provision of the Consolidated Appropriations Act, 2021 (12/21/2020).

III. Discussion of Proposed Rule

Under this proposed rule, the FDOT Railroad Bridge would be allowed to remain closed to navigation until the bridge replacement project is completed. The waterway from the railroad bridge to the water control structure has been deauthorized of navigational rights, therefore, impacts to navigation are not expected. Vessels that can pass beneath the bridge without an opening would be able to so at any time.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This proposed rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive

Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels able to transit the bridge without an opening may do so at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has 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. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0379 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. 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.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. 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 in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

§ 117.307 [Removed]

■ 2. Remove § 117.307.

Dated: July 07, 2024.

Douglas M. Schofield,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.

[FR Doc. 2024–15233 Filed 7–12–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2024–0116; FRL–11972–01–R4]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: North Carolina has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed North Carolina's application and has determined, subject to public comment, that these changes satisfy all requirements needed to qualify for final authorization. Therefore, in the ''Rules and Regulations'' section of this **Federal Register**, we are authorizing North Carolina for these changes as a final action without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received on or before August 14, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2024–0116, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Leah Davis, the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Please also contact Leah Davis if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

All documents in the docket are listed in the *www.regulations.gov* index. Publicly available docket materials are available electronically in *www.regulations.gov*. For alternative access to docket materials, please contact Leah Davis, the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Leah Davis; RCRA Programs and Cleanup Branch; Land, Chemicals and Redevelopment Division; U.S. Environmental Protection Agency; Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8562; fax number: (404) 562–9964; email address: *davis.leah@epa.gov*.

SUPPLEMENTARY INFORMATION: This document proposes to take action on North Carolina's changes to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA), as amended. We have published a final action authorizing these changes in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the final action.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the final action and it will not take effect. We would then address all public comments in a subsequent final action and base any further decision on the authorization of the State program changes after considering all comments received during the comment period.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Dated: June 28, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–15116 Filed 7–12–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2024–0034]

Federal Motor Vehicle Safety Standards; Rear Impact Guards; Rear Impact Protection; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petitions for rulemaking.

SUMMARY: This document denies a petition for rulemaking from Jerry and Marianne Karth, Eric Hein, and Lois Durso-Hawkins, requesting that NHTSA amend Federal Motor Vehicle Safety Standards (FMVSS) No. 223, ''Rear impact guards,'' and FMVSS No. 224, ''Rear impact protection,'' to include additional requirements. The agency is denying the petition because it does not provide new or different information that would warrant initiation of a rulemaking at this time. This document also discusses NHTSA's consideration of a similar petition from the same petitioners submitted to the docket of the July 15, 2022 final rule amending FMVSS Nos. 223 and 224.

DATES: July 15, 2024.

ADDRESSES: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Ms. Lina Valivullah, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590, (telephone) (202) 366–8786, (email) *Lina.Valivullah@dot.gov.*

For legal issues: Ms. Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590, (telephone) (202) 366–2992, (email) *Callie.Roach@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The National Traffic and Motor Vehicle Safety Act (''Safety Act'') (49 U.S.C. 30101 *et seq.*) authorizes the Secretary of Transportation (NHTSA by delegation) [1] to issue safety standards for new motor vehicles and new items of motor vehicle equipment. The Safety Act requires, at 49 U.S.C. 30111, motor vehicle safety standards to be practicable, meet the need for motor vehicle safety, and be stated in objective terms. Pursuant to this authority, NHTSA issued Federal Motor Vehicle Safety Standard (FMVSS) No. 223, ''Rear impact guards,'' and FMVSS No. 224, ''Rear impact protection,'' which together provide protection for occupants of passenger vehicles in crashes into the rear of trailers and semitrailers.

On July 15, 2022, NHTSA published a final rule in the **Federal Register** upgrading FMVSS Nos. 223 and 224 by adopting requirements similar to Transport Canada's standard for rear impact guards.[2] The updated safety standards require rear impact guards to provide sufficient strength and energy absorption to protect occupants of compact and subcompact passenger cars impacting the rear of trailers at 56 kilometers per hour (km/h) (35 miles per hour (mph)). This final rule provides upgraded protection in crashes in which the passenger motor vehicle hits the rear of the trailer or semitrailer such that 50 to 100 percent of the width of the passenger motor vehicle overlaps the rear of the trailer or semitrailer.

II. Petitions Received

NHTSA received a petition for rulemaking from Jerry and Marianne Karth, Eric Hein, and Lois Durso-Hawkins dated August 18, 2022, requesting that NHTSA initiate rulemaking ''to require that Rear Impact Guards on van-type or box semitrailers are able to prevent underride by passenger vehicles at 35 mph in 30% offset crashes.''

NHTSA received a similar submission from Jerry and Marianne Karth, Eric Hein, Lois Durso-Hawkins, Aaron Kiefer, Andy Young, and Garrett Mattos dated July 15, 2022, submitted as a petition for reconsideration of the July 15, 2022 final rule.[3] That petition requested revision of the final rule to include additional requirements. The July 15, 2022 submission does not meet the requirements in 49 CFR part 553 for a petition for reconsideration.[4] For this reason, the agency has decided to consider that submission as a petition for rulemaking. Due to the similarities in the issues raised in the August 18, 2022 petition and the July 15, 2022 submission, NHTSA is responding to both in this single document.

III. Petitions To Initiate Rulemaking

In the August 18 petition, the petitioners requested that NHTSA promptly initiate rulemaking to require that rear impact guards on trailers provide protection in 30 percent overlap crashes at 35 mph. The petitioners stated that this type of crash is known to result in death and significant injuries, including in collisions with rear impact guards designed to meet the requirements in the July 15, 2022 final rule. In support of their petition, the petitioners stated that NHTSA had been directed by Congress to ''protect the safety of the driving public against unreasonable risk of death or injury'' and claimed that the agency had failed to fulfill these directives.[5] They noted NHTSA's ''acknowledg[ment] that [the final rule] is a *minimum* standard'' but asserted that it ''lacks a genuine commitment to the USDOT's National Roadway Safety Strategy.'' The petitioners stated that there is much debate about the frequency of underride crashes, including those at the 30 percent offset, that 30 percent overlap crashes more often result in more severe injuries due to the failure of the guard and passenger compartment intrusion, and that the agency's reasons for not adding a requirement are incongruous and unfounded. Citing rear impact guard testing by the Insurance Institute for Highway Safety (IIHS) and existing guard designs that have received the TOUGHGUARD award, the petitioners disagreed with NHTSA's decision that additional research was needed before adding a 30 percent overlap requirement.

The petitioners' July 15 submission advanced essentially the same arguments, that NHTSA had failed to address the guard deficiencies for 30 percent overlap protection identified by IIHS and that the agency had ''summarily dismissed'' IIHS's research in issuing the final rule. The petitioners also argued that the 2022 final rule did not address the concern that the attachments of the guards to the trailers were too weak. The petitioners noted that some manufacturers offered their redesigned guards as standard, while other manufacturers offered them only as an option, and that NHTSA ''has demonstrated an unwillingness to require that all manufacturers install these stronger guards as Standard on new trailers'' and has continued to allow unreasonable risk when there is ''available and proven technology.'' They asserted that the Advisory Committee on Underride Protection (ACUP) should have been able to provide input before the final rule was issued.

IV. Agency Response

All NHTSA rulemaking actions establishing an FMVSS must meet the Safety Act's requirements. The FMVSS must be practicable, it must meet the need for motor vehicle safety, and it must be objective, reasonable, and appropriate for the motor vehicle type for which it is prescribed. While a particular trailer model may include a more robust guard as standard, the agency must consider the effect of a mandate on *all* vehicles subject to

[1] 49 CFR 1.95.

[2] 87 FR 42339.

[3] Docket No. NHTSA–2022–0053–0003, document titled ''Petition for Reconsideration of the Rear Impact Guard Rule (July 2022)'', *available at https://www.regulations.gov/document/NHTSA-2022-0053-0003.*

[4] While it was submitted as a petition for reconsideration, the petition did not explain ''why compliance with the rule is not practicable, is unreasonable, or is not in the public interest,'' as required by 49 CFR part 553. In addition, the petitioners did not assert that the requirements established by the final rule should be stayed or revoked. For these reasons, the petition does not meet the requirements in 49 CFR part 553 for a petition for reconsideration.

[5] The petition references report language accompanying the 2022 appropriations bill urging NHTSA to complete rulemaking to improve rear guards that ultimately meet the Insurance Institute for Highway Safety standards for Toughguard awards. House Report No. 117–99 at p. 53; see also the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2022 (Division L—Transportation, Housing and Urban Development and Related Appropriations Act, 2022, Pub. L. 117–103). However, report language must be read in the context of the specific statutory requirements to which NHTSA is subject under the Safety Act.

FMVSS No. 223 and FMVSS No. 224. As explained in the preamble to the final rule (see 87 FR 42359–42360), analysis of the costs and weights for currently available trailers and rear impact guard designs led to the conclusion that a 30 percent overlap condition would not be reasonable or practicable for this FMVSS and would not meet the requirements of Sections 30111(a) and (b) of the Safety Act for issuance of FMVSS. NHTSA continues to research potential cost-effective rear impact guard designs that could improve protection in 30 percent overlap crashes while enhancing protection in full and 50 percent overlap crashes at higher speeds. Issuance of the final rule does not preclude future rulemaking upon the completion of additional research. The agency will consider all input from ACUP's complete report and will consider all views in any future rulemaking.[6]

V. Conclusion

In accordance with 49 U.S.C. 30162 and 49 CFR part 552, NHTSA is denying two petitions for rulemaking requesting that NHTSA initiate rulemaking to amend FMVSS No. 223, ''Rear impact guards,'' and FMVSS No. 224, ''Rear impact protection,'' to include additional requirements. NHTSA is denying these petitions because the petitioners did not provide new or different information that would warrant initiation of a rulemaking at this time.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2024–13956 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–59–P

[6] While Petitioners urged that the views of the ACUP should have been considered before issuing a final rule, we note that they do not seek revocation of the final rule.

Notices

Federal Register
Vol. 89, No. 135
Monday, July 15, 2024

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

Foreign Agricultural Service

Notice of Request for Information (RFI) Inviting Input About the $50 Million Non-Traditional Shelf-Stable Commodities Pilot Program

AGENCY: Foreign Agricultural Service, Department of Agriculture (USDA).

ACTION: Request for information.

SUMMARY: The Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture requests comments from the public to inform an understanding on non-traditional, shelf-stable commodities that could be used in food assistance programming. FAS seeks to learn what commodities could be considered outside the traditional food assistance commodities. This RFI offers interested parties the opportunity to provide FAS with information regarding non-traditional, shelf-stable food aid commodities.

DATES: Comments on this notice must be received by July 30, 2024, to be assured of consideration.

ADDRESSES: USDA invites submission of the requested information through one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email:* FAS will accept electronic submissions emailed to *PPDED@usda.gov.* The email should contain the subject line, ''Response to RFI: $50 million pilot program.''

Instructions: Response to this RFI is voluntary. All comments submitted in response to this RFI will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the comments publicly available via *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Molly Kairn, Program and Management Analyst, U.S. Department of Agriculture, Foreign Agricultural Service, email *PPDED@usda.gov,* Phone 202–713–8673.

SUPPLEMENTARY INFORMATION:

Background

In October 2023, USDA announced with United States Agency for International Development (USAID) the use of $1 billion of Credit Commodity Corporation funding to help fill food security gaps and supply safe and nutritious food to the global community in need.

Of this funding, up to $50 million will be set aside for use in a pilot program that will operate to utilize U.S. commodities that:

1. Have not recently been substantially included in international food assistance programming,
2. Are shelf-stable, and
3. Are suitable for use in feeding food-insecure populations.

These U.S.-grown commodities could include, but are not limited to, nuts; dried fruits; grains such as quinoa, farro, and oats; and canned fish or canned meats.

Request for Information

FAS requests information from the public to help identify non-traditional, shelf-stable commodities that could be used in food assistance programming under the proposed $50 million pilot program. Non-traditional commodities could include, but are not limited to, commodities that have never been used before in food assistance programming, commodities that have not been used in food assistance programming in at least the last 5 years, and/or commodities that can be made into a new product. Additionally, FAS requests information from the public about non-traditional commodities including:

1. Cost per metric tonnage, or other customary commercial unit of measure, including cost to the U.S. Government,
2. Estimated cost of delivery of commodities to a U.S. port,
3. Packaging details, including transportation/containerization requirements and costs,
4. The expected shelf life under normal storage conditions and adverse conditions that might be expected in developing countries (*i.e.,* high humidity and temperatures),
5. Any history/documentation of successful storage performance for the commodity,
6. Nutritional benefits for adults and for children,
7. Essential minerals,
8. Testing requirements for food safety,
9. Consumer preparation instructions, if any, including requirements for potable water, fuel, and cooking time,
10. Whether the commodity meets current Food and Drug Administration requirements,
11. The current production capacity in the United States, and seasonality/availability of the commodity for export,
12. Known challenges and barriers around imports, and
13. Intended age range for population if product is fortified.

Please include any relevant data sources. The response to this RFI is voluntary, and the public is welcome to address any or all the questions and provide additional information that may be relevant to seeking information on non-traditional food aid commodities.

Responses may not exceed ten (10) pages per respondent and should focus on addressing the questions described above. Please do not submit applications, proposals, resumes or promotional materials. The submission shall be written in English and typed on standard 8½″ x 11″ electronic paper (216 mm by 297 mm paper), single spaced, font size 12, with each page numbered consecutively. Any information obtained from this RFI is intended to be used by the Government on a non-attribution basis for planning and developing a pilot program for non-traditional, shelf-stable commodities. This RFI does not constitute a formal solicitation for proposals or abstracts. Your response to this notice will be treated as information only. FAS will not reimburse any costs incurred in responding to this RFI. Respondents are advised that FAS is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this RFI. Responses to this RFI do not bind FAS to any further actions related to this topic. Responses will become government property.

No confidential information, such as confidential business information or proprietary information, should be submitted in comments for this RFI. Comments received in response to this notice will be a matter of public record and will be made available for public inspection and posted without change and as received, including any business information or personal information provided in the comments, such as names and addresses. Please do not include anything in your comment submission that you do not wish to share with the public.

Daniel Whitley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2024–15474 Filed 7–11–24; 4:15 pm]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–22–BUSINESS–0029]

Notice of Processing Timeline Change for the Rural Energy for America Program for Fiscal Year 2024

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (the Agency) is issuing a notice of the Agency's intention to remove the self-imposed restriction that all Fiscal Year (FY) 2024 applications that are submitted under the Rural Energy for America Program (REAP) prior to June 30, 2024, and were not funded in the national unrestricted pooling competitions, must be withdrawn. The Agency is also updating its approach for application reviews. This Notice also outlines the Agency's prioritization of Underutilized Renewable Energy Technologies (UT) in National Office competitions for FY 2024.

DATES: Applicable July 15, 2024.

ADDRESSES: You are encouraged to contact your United States Department of Agriculture (USDA) Rural Development (RD) State Energy Coordinator well in advance of the application deadline to discuss your project and ask any questions about the application process. Contact information for State Office Energy Coordinators can be found at www.*rd.usda.gov/files/RBS_State EnergyCoordinators.pdf.*

Program guidance and application forms may be obtained at *www.rd.usda.gov/programs-services/all-programs/energy-programs.* To submit an electronic application via *grants.gov*, follow the instructions for the REAP funding announcement located at *www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Burns, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 774–678–7238 or email *CPgrants@usda.gov.*

SUPPLEMENTARY INFORMATION:

Extension for REAP FY 2024 Applications

The Agency published two funding opportunity notices and a correction notice in the **Federal Register** for REAP for Fiscal Years 2023 and 2024. The first funding notice was published December 16, 2022 (87 FR 77059). The second funding notice was published March 31, 2023 (88 FR 19239), and the correction notice was published May 31, 2023 (88 FR 34823). The second funding notice and the correction notice are applicable to applications received on or after April 1, 2023 (FY 2024). The two notices state that obligations will take place through September 30, 2024, and complete and eligible applications which were not funded in the national unrestricted pooling must be withdrawn.

Due to the continued overwhelming response of the funding opportunity, the Agency continues to experience longer than anticipated turnaround times. The Agency recognizes this may negatively affect applicants and, to provide equitable treatment, the self-imposed deadline on the national unrestricted pooling competitions for FY 2024 will be extended. The Agency will continue processing FY 2024 applications, those received through June 30, 2024, until December 31, 2024. Unlike many prior years, National Office pooling of Unrestricted Funding is estimated to occur within the first quarter of the 2025 calendar year.

Applications received by June 30, 2024, that remain incomplete on January 1, 2025, will be withdrawn. Unfunded applications from the national competitions will not be moved into the FY 2025 funding cycle and must be withdrawn. Those applicants may submit a new application to compete in FY 2025 competition(s) if they have not already started their project or incurred project costs.

Agency Approach for Application Reviews

To maximize efficiency and address the backlog of applications, the Agency will use the following processing procedures effective on the publication date of this Notice.

Completeness Application Review

If an application does not meet the definition of complete application, according to 7 CFR 4280.103, the Agency will send a notification identifying those parts of the application that are incomplete and no further action will be taken on the application.

The Agency will give 15 business days for applicants to provide the missing documentation. The application will be withdrawn, and the applicant notified if the required documentation is not received within the 15 business days or if the information submitted by the deadline is insufficient.

Application processing will continue if all documentation is received timely and is sufficient to meet the definition of a complete application.

Eligibility Review for Complete Applications

The Agency will review for applicant and project eligibility and financial and technical feasibility. If the Agency requires additional clarification or documentation, the Agency will send a notification and give 15 business days for the applicant to provide the information.

The application will be withdrawn, and the applicant notified if the required information is not received within the 15 business days or if the information submitted by the deadline is insufficient.

Application processing will continue if all information is received timely and is sufficient for determining applicant and project eligibility. The applicant will then receive a notification of the eligibility review outcome.

Prioritization of Underutilized Renewable Energy Technologies (UT)

To carry out the Inflation Reduction Act's intention to have set aside competition for UT, the Agency anticipates holding National Office competitions, exclusively for projects proposing the use of UT. These National Office competitions are anticipated to be held through the end of FY 2024, as needed.

In addition, the FY 2024 National Office Unrestricted pooled competition will first consider funding project proposing the use of UT in accordance with the March 31, 2023, REAP NOSA (88 FR 19239). This Unrestricted National Office pooled competition is

anticipated to be held within the first quarter of calendar year 2025.

Kathryn E. Dirksen Londrigan,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2024–15426 Filed 7–12–24; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No.: RHS–24–CF–0022]

60-Day Notice of Proposed Information Collection: Community Facilities Grant Program; OMB Control No.: 0575–0173

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the Community Facilities Grant Program.

DATES: Comments on this notice must be received by September 13, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted through the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency actions,'' enter the following docket number: (RHS–24–CF–0022), and click the ''Search'' Button. To submit public comments, select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if applicable). Input your email address and select an identity category then click ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

FOR FURTHER INFORMATION CONTACT: MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email *MaryPat.Daskal@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that will be submitted to OMB for extension.

Title: 7 CFR 3570–B, ''Community Facilities Grant Program.''

OMB Control Number: 0575–0173.

Expiration Date of Approval: February 28, 2025.

Type of Request: Extension of a currently approved information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.82 hours per response.

Respondents: Public bodies, nonprofit corporations and associations, and federally recognized Indian tribes.

Estimated Number of Respondents: 1,272.

Estimated Number of Responses per Respondent: 7.60.

Estimated Number of Responses: 9,671.

Estimated Total Annual Burden on Respondents: 17,680 hours.

Abstract: Community Programs, a division of the Rural Housing Service (RHS), is part of the United States Department of Agriculture's Rural Development mission area. The Agency is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926), as amended, to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, child care, hospitals, clinics, assisted-living facilities, fire and rescue stations, police stations, community centers, public buildings, and transportation. Through its Community Programs, the Department of Agriculture is striving to ensure that such facilities are readily available to all rural communities.

Information will be collected by the field offices from applicants, consultants, lenders, and public entities. The collection of information is considered the minimum necessary to effectively evaluate the overall scope of the project.

Failure to collect information could have an adverse impact on effectively carrying out the mission, administration, processing, and program requirements.

Comments are invited on: (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) 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of this information collection can be obtained from Kimble Brown, Rural Development Innovation Center, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–6780. Email *kimble.brown@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024–15463 Filed 7–12–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No.: RHS–24–CF–0021]

60-Day Notice of Proposed Information Collection: Fire and Rescue Loans; OMB Control No.: 0575–0120

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Fire and Rescue Loans.

DATES: Comments on this notice must be received by September 13, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted through the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency actions,'' enter the following docket number: (RHS–24–CF–0021), and click the ''Search'' Button. To submit public

comments, select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if applicable). Input your email address and select an identity category then click ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

FOR FURTHER INFORMATION CONTACT: MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email *MaryPat.Daskal@usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for extension.

Title: 7 CFR 1942–C, ''Fire and Rescue Loans''.

OMB Control Number: 0575–0120.

Expiration Date of Approval: January 31, 2025.

Type of Request: Extension of a currently approved information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.10 hours per response.

Respondents: Not-for-profit institutions, State, local, or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 3.75.

Estimated Number of Responses: 3,746.

Estimated Total Annual Burden on Respondents: 7,881 hours.

Abstract: The Fire and Rescue Loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas and is covered by 7 CFR 1942–C. The primary regulation for administering the Community Facilities program is 7 CFR 1942–A (OMB Number 0575–0015) that outlines eligibility, project feasibility, security, and monitoring requirements.

The Community Facilities fire and rescue program has been in existence for over 35 years. This program has financed a wide range of fire and rescue projects varying in size and complexity from construction of a fire station with firefighting and rescue equipment to financing a 911 emergency system. These facilities are designed to provide fire protection and emergency rescue services to rural communities.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, assess project feasibility, and ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Comments are invited on: (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) 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of this information collection can be obtained from Kimble Brown, Rural Development Innovation Center, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–6780. Email *kimble.brown@usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024–15462 Filed 7–12–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No.: RHS–24–CF–0020]

60-Day Notice of Proposed Information Collection: Community Facility Loans; OMB Control No.: 0575–0015

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for Community Facility Loans.

DATES: Comments on this notice must be received by September 13, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted through the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency actions,'' enter the following docket number: (RHS–24–CF–0020), and click the ''Search'' Button. To submit public comments, select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if applicable). Input your email address and select an identity category then click ''Submit Comment.''

Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

FOR FURTHER INFORMATION CONTACT: MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email *MaryPat.Daskal@usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for extension.

Title: 7 CFR 1942–A, ''Community Facility Loans''.

OMB Control Number: 0575–0015.

Expiration Date of Approval: December 31, 2024.

Type of Request: Extension of a currently approved information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.08 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 4,458.

Estimated Number of Responses per Respondent: 16.4.

Estimated Number of Responses: 73,155.

Estimated Total Annual Burden on Respondents: 79,512 hours.

Abstract: The Community Facilities loan program is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community Facilities programs have been in existence for 40 years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small day care centers. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, assess project feasibility, and ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Comments are invited on: (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) 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of this information collection can be obtained from Kimble Brown, Rural Development Innovation Center—Regulations Management Division, at (202)720–6780, Email: *kimble.brown@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024–15464 Filed 7–12–24; 8:45 am]

BILLING CODE 3410–XV–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2024–0004

Proposed Submission of Information Collection; Comment Request; Online Training Request Form

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Architectural and Transportation Barriers Compliance Board (Access Board or Board) invites comment on a proposed new collection of information titled ''Technical Assistance Training Request Form''. The purpose of this information collection is to provide a standardized method for members of the public and State and local governments to request training from the Access Board. With this notice, the Access Board solicits comments on this new proposed information collection.

DATES: Send comments on or before September 13, 2024.

ADDRESSES: You may submit comments, identified by docket number ATBCB–2024–0004, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: docket@access-board.gov.* Include docket number ATBCB–2024–0004 in the subject line of the message.
- *Mail:* Office of General Counsel, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111.

Instructions: All submissions must include the docket number (ATBCB–2024–0004) for this regulatory action. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov/docket/ATBCB-2024-0004.*

FOR FURTHER INFORMATION CONTACT: Attorney Advisor Wendy Marshall, (202) 272–0043, *marshall@access-board.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA and its implementing regulations (5 CFR part 1320), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor (*e.g.,* contractually-required information collection by a third-party). ''Collection of information,'' within the meaning of the PRA, includes agency requests that pose identical questions to, or impose reporting or recording keeping obligations on, ten or more persons, regardless of whether response to such request is mandatory or voluntary. See 5 CFR 1320.3(c); see also 44 U.S.C. 3502(3). Before seeking clearance from OMB, agencies are generally required, among other things, to publish a 60-day notice in the **Federal Register** concerning any proposed information collection and provide an opportunity for comment. See 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

II. Proposed New Information Collection Request

The Access Board is providing notice of its intent to seek approval of a new information collection regarding requests for training by members of the public and state and local governments. The Access Board provides training and technical assistance on the guidelines and standards that it promulgates, including design criteria for the built environment, transit vehicles, public rights-of-way, information and communication technology, and medical diagnostic equipment under the Americans with Disabilities Act of 1990, the Architectural Barriers Act of 1968, and other laws. By practice, the Access Board provides in-person and virtual training to organizations across the United States, to include State and local agencies. The Access Board receives email requests for training which currently result in multiple communications with the requestor to determine if the Access Board is able to

provide the training requested. The Access Board is proposing to streamline this process for both the requestor and the Board by creating a form for the agency website to allow requestors to submit all of the necessary information at one time so the Board can review the request and make a determination whether the training can be provided. The online form will be used unless the requestor expresses a preference for another format (*e.g.,* discussion by telephone).

OMB Control Number: X.

Title: Technical Assistance Training Request Form.

Type of Request: New Collection.

Abstract: The proposed information collection activity enables members of the public, including state and local agencies, to request technical assistance training on the standards and guidelines issued by the Access Board. This collection will allow for streamlining the process and decreasing wait times for responses to these requests.

Respondents/Affected Public: Individuals and Households; Businesses and Organizations; State, Local or Tribal Government.

Burden Estimates: In the table below (table 1), the Access Board provides estimates for the annual reporting burden under this proposed information collection. The Access Board does not anticipate incurring any capital or other direct costs associated with this information collection. Nor will there be any costs to respondents, other than their time.

TABLE 1—ESTIMATED ANNUAL BURDEN HOURS

Type of collection	Number of respondents	Frequency of response (per year)	Average response time (mins.)	Total burden (hours)
Technical Assistance Training Request	1,000	1	5	5,000

(**Note:** Total burden hours per collection rounded to the nearest full hour.)

Request for Comment: The Access Board seeks comment on any aspect of the proposed new information collection, including: (a) whether it is necessary for the Access Board's performance of the functions of the agency; (b) whether the information will have practical utility; (c) the accuracy of the estimated burden; (d) ways for the Access Board to enhance the quality, utility, and clarity of the information collections; and (e) ways that the burden could be minimized without reducing the quality of the collected information. Comments will be summarized and included in our request for OMB's approval of the new information collection.

Christopher Kuczynski,

General Counsel.

[FR Doc. 2024–15415 Filed 7–12–24; 8:45 am]

BILLING CODE 8150–01–P

U.S. COMMITTEE ON THE MARINE TRANSPORTATION SYSTEM

[Docket No. DOT–OST–2024–0044]

Request for Information To Identify Barriers to Planning for Climate Resilience in U.S. Ports

AGENCY: U.S. Committee on the Marine Transportation System.

ACTION: Notice of request for information (RFI).

SUMMARY: The U.S. Committee on the Marine Transportation System (CMTS) seeks information to identify what types of planning guidance, documents, datasets, and Federal funding opportunities are currently being utilized in planning for long-term environmental change in U.S. Ports; and to identify barriers to action. The information received from this RFI will be analyzed to assess whether the needs for this type of planning are being met and identify where improvements could be made. Information is requested from anyone who works in or adjacent to climate resilience planning and execution in ports (public and private).

DATES: Interested persons and organizations are invited to submit comments on or before August 29, 2024.

ADDRESSES: Interested individuals and organizations should submit comments electronically via *regulations.gov.* Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline may not be incorporated or taken into consideration.

Instructions: Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on how to use *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ'' (*https://www.regulations.gov/faq*).

Privacy Note: CMTS's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. CMTS requests that no proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

FOR FURTHER INFORMATION CONTACT: Heather Gilbert, Senior Policy Advisor, U.S. Committee on the Marine Transportation System; telephone (202) 366–3612; email *heather.gilbert@cmts.gov.*

SUPPLEMENTARY INFORMATION: Per the interagency sea level rise report ''2022: Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines,'' sea level rise driven by global climate change is a clear and present risk to the United States today and for the coming decades and centuries. Sea levels will continue to rise due to the ocean's sustained response to the warming that has already occurred—even if climate change mitigation succeeds in limiting surface air temperatures in the coming decades. Tens of millions of people in the United States already live in areas at risk of coastal flooding, with more moving to the coasts every year. Rising sea levels and land subsidence are combining, and will continue to combine, with other coastal flood factors, such as storm surge, wave effects, rising coastal water tables, river flows, and rainfall, some of whose characteristics are also undergoing climate-related changes. The net result will be a dramatic increase in the exposure and vulnerability of this growing population, as well as the critical infrastructure related to transportation, water, energy, trade, military readiness, and coastal ecosystems and the supporting services they provide.

By 2050, the expected relative sea level will cause tide and storm surge heights to increase and will lead to a shift in U.S. coastal flood regimes, with major and moderate high tide flood events occurring as frequently as moderate and minor high tide flood events occur today. Without additional risk-reduction measures, U.S. coastal infrastructure, communities, and ecosystems will face significant consequences. [*https://aambpublicoceanservice.blob.core.windows.net/oceanserviceprod/hazards/sealevelrise/noaa-nos-techrpt01-global-regional-SLR-scenarios-US.pdf*]

In addition to the impacts of sea level rise and flood risk, it is reasonable to assess whether changes in precipitation intensity and frequency or increasing temperatures will have impacts on port infrastructure, intermodal connectivity, or workforce health and efficiency. Long range planning efforts might consider if changes in sea ice extent and other environmental factors may lead to shifts in global trade patterns and shipping routes. Ports may assess potential changes in preferred shipping routes and changes to cargo volume and types associated with these shifts.

Various guidance documents have been published that can be used by ports for resiliency planning. The CMTS is looking to better understand how different threats impacting our ports—including increased storms, atmospheric rivers, changes in precipitation patterns are being perceived, planned for, and managed. What types of planning guidance, documents, datasets, and Federal funding opportunities are currently being utilized in planning for long-term environmental change on decadal or longer time scales?

Guides, such as the CISA Marine Transportation System Resilience Assessment Guide and the FEMA National Resilience Guidance have been released to help address these issues, and the CMTS is seeking input on how ports, port users and stakeholders are planning for these anticipated long term environmental changes.

Information Requested

Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response. The CMTS welcomes any responses to inform and guide the work of the request for information. Please feel free to respond to as many questions as you choose, indicating the question number being addressed. Responses are encouraged to include the name of the person(s) or organization(s) filing the comment, and may also include the respondent type (*e.g.,* academic, non-profit, professional society, community-based organization, industry, trainee/student, member of the public, government, other). Respondent's role in the organization may also be provided (*e.g.,* port professional, researcher, faculty, or program manager) on a voluntary basis. Additionally, please include the Docket ID at the top of your comments.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links to the referenced materials. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. Respondents may provide information on as many questions below as they choose. Input is welcome from stakeholders and members of the public representing all backgrounds and perspectives.

For this RFI, ''port'' means any waterways, shoreside infrastructure, and/or intermodal connections that work together as a transportation system. 'User' includes port authorities, officials, employees, consultants, and/or anyone that uses a port. To support this information gathering, CMTS seeks information on the types of planning guidance, documents, datasets, and Federal funding opportunities currently being utilized in planning for long-term environmental change in and adjacent to ports. If effective planning is not being undertaken, what are the barriers to action? To guide your input, please respond to any or all of the following questions:

1. Demographics. What is the type of organization you represent, the size of port, and the region you are located in?

2. Use of Guidance and/or information products Documents to Support Long-term (*e.g.,* decades or longer) Port Resilience Planning. Have you used any of the documents listed below, or other similar, federally produced documents to plan for resilient port infrastructure in the face of a changing climate? If yes, please describe your experiences using them. If you have not used them, why not? Did you utilize other planning documents? Did you encounter any barriers or difficulties using these documents?

- National Resilience Framework—The White House
- National Climate Resilience Framework—USGCRP
- DOT Climate Action Plan for Resilience—DOT
- Inland Port Community Resilience Roadmap (2018)—EPA
- Climate Mapping for Resilience and Adaptation—DOI, NOAA
- Marine Transportation Resilience Assessment Guide—CISA
- Digital Coast—NOAA
- Federal Funding Handbook for the Marine Transportation System Sixth Edition (resource)—CMTS

3. Access to Port Resilience Data. How/where do you obtain environmental data and decision support for your port resilience planning needs? Do these data include future projections of environmental conditions, such as sea level rise? Are the data you obtain sufficient to meet your requirements?

4. Long-term Port Resilience Planning Process. How do you approach port resilience planning for climate change? Is it done in-house or contracted? Who in your organization does your port resilience planning?

5. Have you engaged in port-to-port sharing? Are you open to engaging in port-to-port sharing to learn best practices from other ports?

6. Grants and Other Funding Opportunities. Do you have an awareness of the availability of Federal or State funding opportunities to support port resilience and infrastructure planning? If so, have you applied to and/or been awarded any funding specifically to support long-term port resilience and infrastructure planning? Do you know where to find funding opportunities?

a. Is funding available to do the planning work?

b. What gaps or challenges have you encountered related to obtaining grants/funding/etc.? (Information on applying; planning documents; etc.)

7. Additional Needs. What more (in addition to funding, existing guidance, and existing data) do you need to improve your long-term resilience planning? (*e.g.,* authoritative guidance documents, technical qualifications, data, incentives to plan for longer time frames, a central location for accessing all the information in one place, better planning tools, certification or leadership programs for port employees)

8. Other. Is there anything else you would like to share related to this request for information?

Authority: 46 U.S.C. 50401.

Issued in Washington, DC.

Brian James Tetreault,

Acting Director, U.S. Committee on the Marine Transportation System.

[FR Doc. 2024–15356 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–9X–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual, public briefing via Zoom at 9:30 a.m. ChST on Wednesday, October 16, 2024 (7:30 p.m. ET on Tuesday, October 15, 2024). The purpose of this briefing is to hear testimony on the topic, *Overrepresentation of FAS Members in the Criminal Justice System on Guam.*

DATES: Wednesday, October 16, 2024, from 9:30 a.m.–11:30 a.m. ChST (Tuesday, October 15, 2024, from 7:30 p.m.–9:30 p.m. ET).

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_JH9kHWbVTc-j0ayN4RQEPg.

Join by Phone (Audio Only): (833) 435–1820 USA Toll Free; Meeting ID: 160 830 2821.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (434) 515–2395.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via the file sharing website, *www.box.com.* Persons interested in the work of this Committee are directed to the Commission's website, *www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Panelist Presentations & Committee Q&A
III. Public Comment
IV. Closing Remarks
V. Adjournment

Dated: July 8, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–15241 Filed 7–12–24; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual, public briefing via Zoom at 9:30 a.m. ChST on Wednesday, August 14, 2024 (7:30 p.m. ET on Tuesday, August 13, 2024). The purpose of this briefing is to hear testimony on the topic, *Overrepresentation of FAS Members in the Criminal Justice System on Guam.*

DATES: Wednesday, August 14, 2024, from 9:30 a.m.–11:30 a.m. ChST (Tuesday, August 13, 2024, from 7:30 p.m.–9:30 p.m. ET).

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_2MOz6366R4qSNykpuq-pnA.

Join by Phone (Audio Only): (833) 435–1820 USA Toll Free; Meeting ID: 161 909 5643.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (434) 515–2395.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via the file sharing website, *www.box.com.* Persons interested in the work of this Committee are directed to the Commission's website, *www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Panelist Presentations & Committee Q&A
III. Public Comment
IV. Closing Remarks
V. Adjournment

Dated: July 8, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–15243 Filed 7–12–24; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the California Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene by ZoomGov on Friday, July 26, 2024, for the purpose of discussing their project on the civil rights implications of AB5.

DATES: Friday, July 26, 2024, from 1:00 p.m.–2:00 p.m. PT.

Zoom Webinar Link to Join: *https://www.zoomgov.com/meeting/register/vJIsceuurzMvHZy4pqOUlWBqy1MhIwy5iUA.*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Angelica Trevino, Support Services Specialist at *atrevino@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, California Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *atrevino@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: July 8, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–15240 Filed 7–12–24; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual, public briefing via Zoom at 9:30 a.m. ChST on Wednesday, September 18, 2024 (7:30 p.m. ET on Tuesday, September 17, 2024). The purpose of this briefing is to hear testimony on the topic, *Overrepresentation of FAS Members in the Criminal Justice System on Guam.*

DATES: Wednesday, September 18, 2024, from 9:30 a.m.–11:30 a.m. ChST (Tuesday, September 17, 2024, from 7:30 p.m.–9:30 p.m. ET).

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_y3cOwVNMTzCrel8KXQDt_Q.

Join by Phone (Audio Only): (833) 435–1820 USA Toll Free; Meeting ID: 161 553 7508.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (434) 515–2395.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via the file sharing website, *www.box.com.* Persons interested in the work of this Committee are directed to the Commission's website, *www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Panelist Presentations & Committee Q&A
III. Public Comment
IV. Closing Remarks
V. Adjournment

Dated: July 8, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–15242 Filed 7–12–24; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2024]

Foreign-Trade Zone (FTZ) 265, Notification of Proposed Production Activity; Unimacts Company; (Steel Products); Conroe, Texas

The City of Conroe, grantee of FTZ 265, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Unimacts Company (Unimacts) for Unimacts's facility in Conroe, Texas within FTZ 265. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on July 3, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include: machined structural ''H'' shaped steel supports and structural steel support machined tubes (duty-free).

The proposed foreign-status materials/components include: flat-rolled steel of varying thicknesses and steel shape ''H'' of varying weights (duty-free). The request indicates that certain materials/components may be subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is August 26, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Kolade Osho at *Kolade.Osho@trade.gov.*

Dated: July 9, 2024.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2024–15444 Filed 7–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology Technical Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology Technical Advisory Committee (ETTAC) will meet on July 30, 2024, at 9:00 a.m.–4:30 p.m., (Eastern Daylight Time) in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee's primary focus is the identification of emerging and foundational technologies that may be developed over a period of five to ten years with potential dual-use applications as early as possible in their developmental stages both within the United States and abroad, and any other matters relating to actions designed to carry out the policy set forth in section 1752(1)(A) of the Export Control Reform Act. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

July 30, 2024

Closed Session: 9:00 a.m.–2:30 p.m.

1. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

Open Session: 3:30 p.m.–4:30 p.m.

2. Opening remarks by the Chairman, Opening remarks by the Bureau of Industry and Security.

3. Opening remarks by BIS Export Administration Leadership.

4. Guest Speaker—Topic TBD.

5. Open Discussion.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov.*

A limited number of seats will be available for members of the public to attend the open session in person. Reservations are not accepted.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Yvette Springer no later than Tuesday, July 23, 2024, so that appropriate arrangements can be made.

To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of materials to the Committee members, the Committee suggests that members of the public forward their materials prior to the meeting to Ms. Springer via email. Material submitted by the public will be made public and therefore should not contain confidential information. Meeting materials from the public session will be accessible via the Technical Advisory Committee (TAC) site at *https://tac.bis.gov,* within 30-days after the meeting.

The Deputy Assistant Secretary for Administration Performing the non-exclusive functions and duties of the Chief Financial Officer, with the concurrence of the delegate of the General Counsel, formally determined on July 3, 2024, pursuant to 5 U.S.C. 1009(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

Meeting Cancellation: If the meeting is cancelled, a cancellation notice will be posted on the TAC website at *https://tac.bis.doc.gov.*

For more information, contact Ms. Springer.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2024–15458 Filed 7–12–24; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products From Canada: Notice of Initiation and Preliminary Results of Changed Circumstances Review

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

SUMMARY: The U.S. Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) to determine whether TRAPA Forest Products Ltd. (TRAPA) is the successor-in-interest to Trans-Pacific Trading Ltd. (Trans-Pacific) in the context of the antidumping duty (AD) order on certain softwood lumber products (softwood lumber) from Canada. We preliminary determine that TRAPA is the successor-in-interest to Trans-Pacific.

DATES: Applicable July 15, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3434.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2018, Commerce published in the **Federal Register** an AD order on softwood lumber from Canada.[1] On April 11, 2024, TRAPA requested that, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), Commerce conduct an expedited CCR of the *Order* to determine that TRAPA is the successor-in-interest to Trans-Pacific and, accordingly, to assign it the cash deposit rate of Trans-Pacific. In its submission, TRAPA stated that in 2024, Trans-Pacific undertook a name change to TRAPA.[2] On May 17, 2024, Commerce issued a supplemental questionnaire to TRAPA identifying certain areas for which we required additional information.[3] On June 4, 2024, TRAPA amended its request for a CCR by providing the requested information.[4]

Scope of the Order

The product covered by the *Order* is softwood lumber from Canada. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[5]

Initiation and Preliminary Results of CCR

Pursuant to section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of information concerning, or a request from, an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by TRAPA supporting its claim that it is the successor-in-interest to Trans-Pacific demonstrates changed circumstances sufficient to warrant such a review.[6] Therefore, in accordance with section 751(b)(1)(A) of the Act and 19 CFR 351.216(d) and (e), we are initiating a CCR based upon the information contained in TRAPAs' submission.

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.[7] In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.[8]

In this CCR, pursuant to section 751(b) of the Act, Commerce is conducting a successor-in-interest analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.[9] While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[10] Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.[11]

In accordance with 19 CFR 351.216, we preliminarily determine that TRAPA is the successor-in-interest to Trans-Pacific. Record evidence, as submitted by TRAPA, indicates that TRAPA operates as essentially the same business entity as Trans-Pacific with respect to the subject merchandise.[12]

For the complete successor-in-interest analysis, including discussion of business proprietary information, *see* the accompanying Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and

[1] *See Certain Softwood Lumber Products from Canada: Antidumping Duty Order and Partial Amended Final Determination,* 83 FR 350 (January 3, 2018) (*Order*).

[2] *See* TRAPA's Letter, ''Request for an Expedited Changed Circumstances Review,'' dated April 11, 2024 (TRAPA CCR Request).

[3] *See* Commerce's Letter, ''Changed Circumstances Review: Supplemental Questionnaire,'' dated May 17, 2024.

[4] *See* TRAPA's Letter, ''Amended Request for Expedited Change Circumstance Review,'' dated June 4, 2024 (Amended CCR Request).

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Changed Circumstances Review of the Antidumping Duty Order on Certain Softwood Lumber Products from Canada,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* 19 CFR 351.216(d).

[7] *See* 19 CFR 351.221(c)(3)(ii); *see also Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy Preliminary Results*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review,* 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

[8] *See, e.g., Pasta from Italy Preliminary Results,* 80 FR at 33480–41, unchanged in *Pasta from Italy Final Results,* 80 FR at 48807.

[9] *See, e.g., Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 81 FR 75376 (October 31, 2016) (*Shrimp from India Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 90774 (December 15, 2016) (*Shrimp from India Final Results*).

[10] *See, e.g., Shrimp from India Preliminary Results,* 81 FR at 75377, unchanged in *Shrimp from India Final Results,* 81 FR at 90774.

[11] *Id.; see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan,* 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688, 34689 (June 18, 2010); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which Commerce found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

[12] *See* TRAPA CCR Request; and Amended CCR Request.

Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[13] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[14] All comments are to be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.[15]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this CCR, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[16] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this CCR. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[17]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request via ACCESS within 30 days of publication of this notice. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing, in accordance with 19 CFR 351.310(d).

Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: July 8, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–15446 Filed 7–12–24; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[14] *See* 19 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.303(b).

[16] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[17] *See APO and Service Final Rule.*

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2024–HQ–0008]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 13, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Forensics and Biometrics Agency, 251 18th Street, Suite 244A, Arlington, VA 22202, ATTN: Mr. Russell Wilson, or call (703) 571–0388.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Automated Biometric Identification System (ABIS); OMB Control Number 0702–0127.

Needs and Uses: The DoD ABIS is an authoritative biometrics data repository that processes, matches, and stores biometric identity information data, collected by global U.S. forces, during the course of military operations. The information processed by DoD ABIS (biometric, biographic, behavioral, and contextual data) is collected by DoD military personnel worldwide using hand-held biometric collection devices across the full range of military operations for DoD warfighting, intelligence, law enforcement, security, force protection, base access, homeland defense, counterterrorism, business enterprise purposes as well as in information environment mission areas.

Biometric data may also be collected for use in field identification and recovery of persons, or their physical remains, who have been captured, detained, missing, prisoners of war, or personnel recovered from hostile control. The information collected and processed by DoD ABIS is shared, accessed, and leveraged by DoD partners, U.S. Government inter-agency and departmental stakeholders, and approved multi-national partners for intelligence, counterterrorism, military force protection, national security, and law enforcement purposes.

Affected Public: Individuals or households.

Annual Burden Hours: 163,333.

Number of Respondents: 1,400,000.

Responses per Respondent: 1.

Annual Responses: 1,400,000.

Average Burden per Response: 7 minutes.

Frequency: As required.

Dated: July 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15420 Filed 7–12–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0080]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Commissary Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 13, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Commissary Agency, 1300 Eisenhower Avenue, Fort Gregg-Adams, Ms. Carol Chambliss, 804–734–8000 ext. 48841.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Commissary Beneficiary Engagement Survey; OMB Control Number 0704–CBES.

Needs and Uses: The survey will be utilized to assess shoppers' perception of the commissary benefit and provide insight on how to get patrons back in or using their benefit. Defense Commissary Agency will use patron responses to improve the commissary by leveraging the actionable insights provided.

Affected Public: Individuals and households.

Annual Burden Hours: 42.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: 5 minutes.

Frequency: On Occasion.

Dated: July 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15424 Filed 7–12–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0081]

Proposed Collection; Comment Request

AGENCY: Defense Acquisition University (DAU), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DAU announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 13, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition University, 9820 Belvoir Road, Fort

Belvoir, VA 22060, ATTN: Mr. Chris Johnson, or call 703–805–4854.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Data Services Management; OMB Control Number 0704–0591.

Needs and Uses: The Data Services Management provides administrative and academic capabilities and functions related to student registrations, account requests, courses attempted and completed, and graduation notifications to DoD training systems.

Affected Public: Individuals or households.

Annual Burden Hours: 208.

Number of Respondents: 2,500.

Responses per Respondent: 1.

Annual Responses: 2,500.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Respondents are university applicants, DoD Acquisition Workforce students (contractor personnel sponsored by a DoD Program Management Office), and instructors who voluntarily provide personal information to take courses administered by DAU or access DAU training, knowledge-sharing, collaboration systems, and course offerings. Failure to provide required information results in the individual being denied access to these services and tools. All respondents are providing data which is used to support the academic functions, including: attendance, grades, statistical analysis, tracking, and reporting for Defense Acquisition Workforce Improvement Act Certification purposes. These functions are necessary to support Acquisition Workforce Certifications; graduation data will be shared with the Services and Corporate Partners of DoD-sponsored students.

Dated: July 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15423 Filed 7–12–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0029]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD (P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 29, 2024.

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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military OneSource Records Request; DD Forms 3126 and 3127; OMB Control Number 0704–MTPR.

Type of Request: New.

Number of Respondents: 350.

Responses per Respondent: 1.

Annual Responses: 350.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 88.

Needs and Uses: This collection is needed to standardize the collection of data by the OUSD(P&R) for Military OneSource records access requests, in accordance with the Privacy Act of 1974 (5 United States Code (U.S.C.) 552a and Freedom of Information Act 5 U.S.C. 552. The OUSD(P&R) utilizes the information provided via this collection to confirm the identity of the requestor, facilitate the timely and accurate identification of the requested records, and ensure written consent for the release of these records is received from all participants.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15425 Filed 7–12–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0020]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy (DON), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 14, 2024.

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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Challenges of Operational Environments Study; OMB Control Number 0703–COPE.

Type of Request: New collection.

Number of Respondents: 5,000.

Responses per Respondent: 2.

Annual Responses: 10,000.

Average Burden per Response: 25 minutes.

Annual Burden Hours: 4,167.

Needs and Uses: Recent suicide clusters aboard Naval vessels have highlighted a critical need to better understand risk factors for suicide among various shipboard environments (*e.g.,* in maintenance yards, at sea). Unfortunately, extremely limited research to date has identified individual and organizational factors that are directly associated with harmful and destructive behaviors, including suicidality, in a variety of Naval environments. In response, the Office of Naval Research and the Defense Health Agency have funded a longitudinal study called the Challenges of Operational Environments Study to identify specific shipboard stressors associated with different phases of the aircraft carrier life cycle and determine the effects of these stressors on Sailor's mental and behavioral health and readiness. Research is needed to provide the Navy with in-depth information on specific risks to Sailors at each phase of the carrier cycle, such that allocation of resources to prevent suicidality and other mental/behavioral health problems can be tailored to meet potentially unique needs at each phase. Additionally, findings from the proposed effort will be used to develop targeted recommendations to improve Sailor mental health and well-being that will be provided directly to Navy leaders.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15419 Filed 7–12–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2024–HQ–0010]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 13, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to OPNAV Forms/Information Collections Office (DNS–14), 2000 Navy Pentagon, Room 4E563, Washington, DC 20350–2000, ATTN: Ms. Ashley Alford, or call 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: CATCH Program; OMB Control Number 0703–0069.

Needs and Uses: Section 543 of Public Law 113–291, the National Defense Authorization Act for Fiscal Year 2015 requires that an individual who files a restricted report on an incident of sexual assault may elect to inform a Military Criminal Investigative Organization (MCIO) on a confidential basis and without affecting the restrictive nature of the report.

The MCIOs will use the information collected to query unrestricted sexual assault investigations and existing restricted reports in the CATCH database and potentially identify serial sexual assault offenders in both restricted and unrestricted reports of sexual assault. Respondents to this information collection are victims in restricted reports of sexual assault made to the Department of Defense. The respondents are providing information for this collection because upon making their restricted report of sexual assault to a Sexual Assault Response Coordinator, each respondent was given the option of voluntarily making a submission to this database. The respondents who elect to participate can do so by providing information electronically or through a CATCH submission form. The successful end result of this information collection is the identification of serial sexual assault offenders that otherwise may have gone undetected if the information had remained restricted from MCIO access.

Affected Public: Individuals or households.

Annual Burden Hours: 193.

Number of Respondents: 385.

Responses per Respondent: 1.

Annual Responses: 385.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: July 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15418 Filed 7–12–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0089]

Agency Information Collection Activities; Comment Request; Higher Education Emergency Relief Fund (HEERF) I, II and III Data Collection Form

AGENCY: Office of Postsecondary Education (OPE), 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 September 13, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0089. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Epps, (202) 453–6337.

SUPPLEMENTARY INFORMATION: The Department, 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 Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Higher Education Emergency Relief Fund (HEERF) I, II and III Data Collection Form.

OMB Control Number: 1840–0850.

Type of Review: Revision of a currently approved ICR.

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

Total Estimated Number of Annual Responses: 270.

Total Estimated Number of Annual Burden Hours: 2,160.

Abstract: Under the current unprecedented national health emergency, the legislative and executive branches of government have come together to offer relief to those individuals and industries affected by the COVID–19 virus under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), and the American Rescue Plan (ARP). In each of these statutes, targeted relief to institutions of higher education (IHEs) was made available under the Higher Education Emergency Relief Fund (HEERF). HEERF, originally established by section 18004(a) of the CARES Act, Public Law 116–136 (March 27, 2020) and expanded through CRRSAA and ARP, authorizes the Secretary of Education to allocate formula grant funds to participating IHEs to address impacts of the COVID–19 virus.

This information collection requests approval for a revision to a previously approved collection that includes annual reporting requirements to comply with the requirements of the HEERF program and obtain information on how the funds were used. The revision simplifies the collection by substantially reducing the number of items because specific grant activities within HEERF have expired and many of the items have become moot. In accordance with the Recipients Funding Certification and Agreements executed by HEERF grantees, the Secretary may specify additional forms of reporting.

Dated: July 9, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–15394 Filed 7–12–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0090]

Agency Information Collection Activities; Comment Request; Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 13, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0090. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.*

Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Angela Hernandez-Marshall, (202) 205–1909.

SUPPLEMENTARY INFORMATION: The Department, 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 Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection.

OMB Control Number: 1810–0698.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 2,634.

Total Estimated Number of Annual Burden Hours: 3,630.

Abstract: The Indian Education Professional Development program, authorized under title VI, part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), is designed to increase the number of, provide training to, and improve the skills of American Indian or Alaska Natives serving as teachers and school administrators in local educational agencies that serve a high proportion of American Indian or Alaska Native students. This is a request for renewal of a currently approved collection.

Section 7122(h) of the ESEA (20 U.S.C. 7442(h)) requires that individuals who receive financial assistance through the Indian Education Professional Development program subsequently complete a service obligation equivalent to the amount of time for which the participant received financial assistance. Participants who do not satisfy the requirements of the regulations must repay all or a pro-rated part of the cost of assistance, in accordance with 20 U.S.C. 7442(h) and 34 CFR 263.9(a)(3). The regulations in part 263 implement requirements governing, among other things, the service obligation and reporting requirements of the participants in the Indian Education Professional Development program, and repayment of financial assistance by these participants. In order for the Federal Government to ensure that the goals of the program are achieved, certain data collection, recordkeeping, and documentation are necessary.

In addition, GPRA requires Federal agencies to establish performance measures for all programs, and the Department has established performance measures for the Indian Education Professional Development program. Data collection from participants who have received financial assistance under the Indian Education Professional Development program is a necessary element of the Department's effort to evaluate progress on these measures.

The Department tracks participants who are receiving or have previously received support through the Indian Education Professional Development program. Participants must sign a payback agreement that includes contact information. Additionally, the Department receives information about participants from institutions of higher education (IHEs) and other eligible grantees when participants are no longer receiving assistance through the Indian Education Professional Development program. When the performance period is complete, the participant data are collected from the grantee and from the participants.

Dated: July 10, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–15427 Filed 7–12–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at North American Electric Reliability Corporation Project 2023–02 Analysis and Mitigation of BES Inverter-Based Resource Performance Issues Standard Drafting Team Meeting; Project Management and Oversight Subcommittee Teleconference; etc.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation: Project 2023–02 Analysis and Mitigation of BES Inverter-Based Resource Performance Issues Standard Drafting Team Meeting, Hybrid: Duke Energy Plaza, 525 S Tyron Street, Charlotte, N.C. 28202

July 16, 2024 | 9:00 a.m.–5:00 p.m. Eastern

July 17, 2024 | 9:00 a.m.–5:00 p.m. Eastern

July 18, 2024 | 9:00 a.m.–5:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://www.nerc.com/pa/Stand/Lists/stand/DispForm.aspx?ID=2385.*

North American Electric Reliability Corporation: Project Management and Oversight Subcommittee Teleconference, WebEx

July 16, 2024 | 2:30 p.m.–4:30 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://www.nerc.com/pa/Stand/Lists/stand/DispForm.aspx?ID=2134.*

North American Electric Reliability Corporation: Member Representatives Committee Pre-Meeting and Informational Session Webinar, WebEx

July 17, 2024 | 1:00 p.m.–2:30 p.m.

Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://www.nerc.com/gov/bot/Lists/bot/DispForm.aspx?ID=710.*

North American Electric Reliability Corporation: Standards Committee Teleconference, WebEx
July 17, 2024 | 1:00 p.m.–3:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://www.nerc.com/pa/Stand/Lists/stand/DispForm.aspx?ID=2086.*

North American Electric Reliability Corporation: System Protection and Controls Working Group Meeting, Hybrid: Hydro Quebec, 1500 Boulevard Robert-Bourassa, 3rd Floor, Montreal Quebec, Canada
July 18, 2024 | 8:00 a.m.–12:00 p.m. Eastern
July 18, 2024 | 1:00 p.m.–5:00 p.m. Eastern
July 19, 2024 | 8:00 a.m.–1:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://www.nerc.com/pa/RAPA/Lists/RAPA/DispForm.aspx?ID=687.*

North American Electric Reliability Corporation: Inverter-Based Resource Performance Subcommittee Meeting, WebEx
July 18, 2024 | 1:00 p.m.–4:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://www.nerc.com/pa/RAPA/Lists/RAPA/DispForm.aspx?ID=658.*

U.S. Department of Energy's (DOE) Interconnection Innovation e-Xchange (i2X) Solution e-Xchange Season 2: Possibilities to Improve Interconnection Data Access & Transparency, Microsoft Teams
July 18, 2024 | 1:00 p.m.–3:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://events.gcc.teams.microsoft.com/event/030d6ed6-943a-4587-b739-fc209e4293bb@6b183ecc-4b55-4ed5-b3f8-7f64be1c4138.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RR24–2–000—North American Electric Reliability Corporation

For further information, please contact Leigh Anne Faugust at (202) 502–6396 or *leigh.faugust@ferc.gov.*

Dated: July 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–15366 Filed 7–12–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0223; FRL–12081–01–OCSPP]

Chlorpyrifos; Notice of Receipt of Request To Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Environmental Protection Agency (EPA or Agency) is providing this notice of receipt of and soliciting comment on the requests identified in Unit II. received from the registrants to voluntarily cancel their registrations of certain products containing the pesticide chlorpyrifos, or to amend their chlorpyrifos registrations to terminate one or more uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests or if the registrant withdraws their request to cancel these uses or products. If these requests are granted, EPA will issue a final cancelation order under which any sale, distribution, or use of the products listed in this notice will be permitted after the registrations have been cancelled or the uses terminated only if such sale, distribution, or use is consistent with the terms described in the final order.

DATES: Comments must be received on or before August 14, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0223, through the *Federal eRulemaking Portal* at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0700; email address: *OPPChlorpyrifosInquiries@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare comment for EPA?

1. Submitting CBI. Do not submit CBI to EPA through email or *https://www.regulations.gov*. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from the registrants identified in Table 3 of this unit to cancel certain pesticide products or uses registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number in table 1 and table 2 of this unit.

The current voluntary requests for termination of certain registered chlorpyrifos uses submitted by Loveland and as reflected in this notice supersede the requests for voluntary cancellation previously submitted by Loveland for which EPA provided notice in the **Federal Register** on August 29, 2023 (88 FR 59521) (FRL–5993–05–

OCSPP), Chlorpyrifos; Notice Receipt of Request to Voluntarily Cancel Certain Pesticide Registrations.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** cancelling registrations and terminating uses as requested after the close of the comment period.

TABLE 1—CHLORPYRIFOS REGISTRATIONS WITH PENDING REQUESTS TO TERMINATE SPECIFIC USES

Registration No.	Product name	Company	Uses to be terminated
19713–505	Drexel Chlorpyrifos 15G	Drexel	Food uses: Asparagus (except MI), citrus orchard floors (except in AL, FL, GA, NC, SC, TX), Cole crop (Brassica) leafy vegetables, radish, rutabaga, turnip, Bok choy, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, Chinese broccoli, Chinese cabbage, collards, kale, and kohlrabi; corn (field, sweet, corn grown for seed), onions (dry bulb), peanuts, sorghum (grain sorghum-milo), soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflower, sweet potato.
19713–520	Drexel Chlorpyrifos 4E–AG	Drexel	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (except MI), citrus fruits and citrus orchard floors (except in AL, FL, GA, NC, SC, TX), cranberries, corn (field, sweet, corn grown for seed), cotton (except for AL, FL, GA, NC, SC, VA), figs, grapes, mint (peppermint, spearmint), onions (dry bulb), peanuts, sorghum, soybeans (except for AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberries (except OR), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflowers, sweet potatoes, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), plums, prunes, pears), tree nuts and orchard floor (almonds, filberts, pecans, walnuts), vegetables (Brassica (Cole) leafy vegetables), radish, rutabaga, turnip, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, cavolo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens, legume vegetables (succulent or dried; except soybeans), adzuki beans, asparagus bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, Chinese long bean, cowpea, Crowder pea, dwarf pea, edible pod pea, English pea, fava bean, field bean, field pea, garbanzo bean, garden pea, grain lupin, green pea, guar, hyacinth pea, jack bean, lima bean (dry and green), kidney bean, lablab bean, lentil, moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, runner bean, southern pea, sugar snap pea, sweet lupin, sword bean, tepary bean, urd bean, wax bean, white lupin, white sweet lupin, yard long bean, and wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).
19713–521	Drexel Chlorpyrifos 15GR	Drexel	Food uses: Asparagus (MI only), citrus orchard floor (except in AL, FL, GA, NC, SC, TX), Cole crop (Brassica) leafy vegetables, radish, rutabaga, turnip, Bok choy, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, Chinese broccoli, Chinese cabbage, collards, kale and kohlrabi; corn (field, sweet, corn grown for seed), onions (dry bulb), peanuts, sorghum (grain sorghum-milo), soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflowers, sweet potato.
19713–573	Drexel Chlorpyrifos Technical.	Drexel	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (MI only), banana, blueberry, caneberry, cherimoya, citrus fruits (except in AL, FL, GA, NC, SC, TX), corn, cotton (except in AL, FL, GA, NC, SC, VA), cranberries, cucumber, date, feijoa, figs, grapes, kiwifruit, leek, legume vegetables (except soybean), mint, onions (dry bulb), pea, peanuts, pepper, pumpkin, sorghum, soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sunflowers, sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sugarcane, strawberries (except OR), sweet potato, tree fruit (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), pears, cherries (except tart cherries in MI), plums/prunes, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), and nectarines), tree nuts (almonds, filberts, pecans and walnuts), vegetables (cauliflower, broccoli, Brussels sprouts, cabbage, collards, kale, kohlrabi, turnips, radishes, and rutabagas), and wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).

TABLE 1—CHLORPYRIFOS REGISTRATIONS WITH PENDING REQUESTS TO TERMINATE SPECIFIC USES—Continued

Registration No.	Product name	Company	Uses to be terminated
19713–599	Drexel Chlorpyrifos 4E–AG2.	Drexel	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (except in MI), citrus fruits and orchard floors (except in except in AL, FL, GA, NC, SC, TX), cranberries, corn (field, sweet, and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), figs, grapes, mint (peppermint, spearmint), onions (dry bulb), peanuts, sorghum, soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberries (except in OR), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflowers, sweet potatoes, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except for tart cherries in MI), nectarines, peaches [except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), pears, plums, prunes); tree nuts and orchard floors (almonds, filberts, walnuts, pecans); vegetables (Brassica (Cole) leafy vegetables), radish, rutabaga, turnip, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, cavolo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens; legume vegetables (succulent and dried, except soybean): adzuki beans, asparagus bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, Chinese long bean, cowpea, Crowder pea, dwarf pea, edible pod pea, English pea, fava bean, field bean, field pea, garbanzo bean, garden pea, grain lupin, green pea, guar, hyacinth pea, jack bean, lima bean (dry and green), kidney bean, lablab bean, lentil, moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, runner bean, southern pea, sugar snap pea, sweet lupin, sword bean, tepary bean, urd bean, wax bean, white lupin, white sweet lupin, yard long bean; wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).
19713–671	Drexel Lambda Fos Insecticide.	Drexel	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), Brussels sprout, corn (field, sweet, and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), sorghum (grain sorghum-milo), soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sunflowers, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except for tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), pears, plums, prunes); tree nuts (almonds, filberts, walnuts, pecans); wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).
34704–857	Warhawk	Loveland	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (except in MI), citrus fruits and orchard floors (except in except in AL, FL, GA, NC, SC, TX), Brassica (Cole) crop leafy vegetables, radish, rutabaga, turnip, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, cavolo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens; corn (field, sweet, and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), cranberry, fig, grape; legume vegetables (succulent or dried, except soybeans), Adzuki bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, cowpea, crowder pea, English pea, field bean, field pea, garden pea, grain lupin, green pea, guar, kidney bean, lablab bean, lentil, lima bean (dry and green), moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, southern pea, sweet lupin, tepary bean, urd bean, white lupin, white sweet lupin; mint (peppermint, spearmint), onion (dry bulb), peanut, sorghum (grain sorghum-milo), soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberry (except in OR), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflower, sweet potato, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries [except for tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), pears, plums, prunes); tree nuts and orchard floor (almonds, filberts, walnuts, pecans), wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).

TABLE 1—CHLORPYRIFOS REGISTRATIONS WITH PENDING REQUESTS TO TERMINATE SPECIFIC USES—Continued

Registration No.	Product name	Company	Uses to be terminated
34704–1077	Warhawk Clear form	Loveland	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (except in MI), citrus fruits and orchard floors (except in AL, FL, GA, NC, SC, TX), Brassica (Cole) leafy vegetables, radish, rutabaga, turnip, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, cavolo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens; corn (field, sweet, and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), cranberry, fig, grape, legume vegetables (succulent or dried, except soybeans), Adzuki bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, cowpea, crowder pea, English pea, field bean, field pea, garden pea, grain lupin, green pea, guar, lima bean (dry and green), kidney bean, lablab bean, lentil, moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, southern pea, sweet lupin, tepary bean, urd bean, white lupin, white sweet lupin; mint (peppermint, spearmint), onion (dry bulb), peanut, sorghum (grain sorghum-milo), soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberry (except in OR), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflower, sweet potato, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except for tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), pears, plums, prunes); tree nuts and orchard floor (almonds, filberts, walnuts, pecans), wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).
34704–1086	Match-Up Insecticide	Loveland	Food uses: Citrus orchard floors (except in AL, FL, GA, NC, SC, TX), field corn and sweet corn (grain, silage and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA); legume vegetables (succulent or dried, except soybeans), Adzuki bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, cowpea, crowder pea, English pea, field bean, field pea, garden pea, grain lupin, green pea, guar, lima bean (dry and green), kidney bean, lablab bean, lentil, moth bean, navy bean, mung bean, pea, pigeon pea, pinto bean, rice bean, southern pea, sweet lupin, tepary bean, urd bean, white lupin, white sweet lupin; peanut, soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY).

As noted in table 1, Drexel and Loveland requested that several food uses be terminated, except in certain enumerated states; however, some of the uses identified in the table are not registered in states excluded from termination. Where the uses are not currently registered in those states, EPA intends to simply approve the use termination requests that are applicable, i.e., cancellation of use in those states where the use is registered, except in the enumerated states where the use is also registered. The request not to terminate uses in states where the product is not registered will not result in the product being registered in those states; registration of those uses in additional states must be accomplished through the FIFRA section 3 registration process.

Specifically, Drexel and Loveland requested that the use on apples be terminated, except in Idaho, Oregon, and Washington, among other states, on EPA Reg. Nos. 19713–520, 19713–599, 19713–671, 34704–857, and 34704–1077; however, some of the apple uses on those registrations are only permitted in states east of the Rockies. For those apple uses that are currently not permitted in Idaho, Oregon, and Washington, the request not to terminate use on apples in those states has no effect. Similarly, Drexel and Loveland requested that the use on wheat be terminated, except in Missouri (spring and winter wheat) or Iowa (winter wheat), on EPA Reg. Nos. 19713–520, 19713–599, 19713–671, 34704–857, and 34704–1077. But because these products are not registered for use on wheat in those states, that request has no effect. EPA intends to approve the requests to terminate uses that are registered, except for the uses that are requested to be retained where those uses are currently registered.

TABLE 2—CHLORPYRIFOS PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

EPA Registration No.	Product name	Company	Active ingredients
19713–518	Drexel Chlorpyrifos Concentrate	Drexel	Chlorpyrifos.
19713–527	Drexel CHLOR-PY-REX Chlorpyrifos Insecticide.	Drexel	Chlorpyrifos.
19713–575	Drexel Chlorpyrifos 99% Technical	Drexel	Chlorpyrifos.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR TERMINATION OR AMENDMENT OF USES

EPA company No.	Company name and address
19713	Drexel Chemical Company, Agent name: Lewis and Harrison, 2461 South Clark Street, Suite 710, Arlington, VA 22202.
34704	Loveland Product, Inc. (LPI), 3005 Rocky Mountain Ave., Loveland, CO 80538.

III. What is the Agency's authority for taking these actions?

FIFRA section 6(f)(1) (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or cancel registered uses for a pesticide. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide a 30-day public comment period on the request for voluntary cancellation or use termination. 7 U.S.C. 136d(f)(1)(B). In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrant requests a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants listed in table 3 of unit II. have requested that EPA waive the 180-day comment period. Accordingly, EPA is providing a 30-day comment period on the requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish a final cancellation order in the **Federal Register**. In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in tables 1 and 2 of unit II:

• Sale and distribution of existing stocks of Drexel CHLOR-PY-REX Chlorpyrifos Insecticide (EPA Reg. No. 19713–527), Drexel Chlorpyrifos Technical (EPA Reg. No. 19713–573) and Drexel Chlorpyrifos 99% Technical (EPA Reg. No. 19713–575) will not be permitted after the final cancellation order is issued.

• Sale and distribution of existing stocks for the following products will be permitted until April 30, 2025:

—Drexel Chlorpyrifos 15G (EPA Reg. No. 19713–505).
—Drexel Chlorpyrifos 4E–AG (EPA Reg. No. 19713–520).
—Drexel Chlorpyrifos 15GR (EPA Reg. No. 19713–521).
—Drexel Chlorpyrifos 4E–AG2 (EPA Reg. No. 19713–599).
—Drexel Lambda Fos Insecticide (EPA Reg. No. 19713–671).
—Warhawk (EPA Reg. No. 34704–857).
—Warhawk Clear form (EPA Reg. No. 34704–1077); and
—Match-Up Insecticide (EPA Reg. No. 34704–1086).

• Use of existing stocks of the following products on food, food processing sites, and food manufacturing sites must be consistent with the product labeling and will be permitted until June 30, 2025:

—Drexel Chlorpyrifos 15G (EPA Reg. No. 19713–505).
—Drexel Chlorpyrifos 4E–AG (EPA Reg. No. 19713–520).
—Drexel Chlorpyrifos 15GR (EPA Reg. No. 19713–521).
—Drexel Chlorpyrifos 4E–AG2 (EPA Reg. No. 19713–599).
—Drexel Lambda Fos Insecticide (EPA Reg. No. 19713–671).
—Warhawk (EPA Reg. No. 34704–857).
—Warhawk Clear form (EPA Reg. No. 34704–1077); and
—Match-Up Insecticide (EPA Reg. No. 34704–1086).

• Use of existing stocks of these products for non-food purposes will be permitted until existing stocks are exhausted, as long as such use is in accordance with the labeling.

• Use of existing stocks of Drexel Chlorpyrifos Concentrate (EPA Reg. No. 19713–518), will be permitted until existing stocks are exhausted, as long as such use is in accordance with the labeling as this product is not registered for any food uses.

After the dates identified in the final cancellation order, sale and distribution of existing stocks will be prohibited, except for export consistent with FIFRA section 17 (7 U.S.C. 136o), or for proper disposal.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 9, 2024.

Jean Anne Overstreet,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2024–15451 Filed 7–12–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2024–0254; FRL–11982–01–R10]

Delegation of Authority to the State of Idaho To Implement or Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On May 10, 2023, the Environmental Protection Agency (EPA) sent the State of Idaho (Idaho) two letters acknowledging that Idaho's delegation of authority to implement and enforce the National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) had been updated. To inform regulated facilities and the public, the EPA is, through this notice, making available a copy of the EPA's letters to Idaho.

DATES: On May 10, 2023, the EPA sent Idaho two letters acknowledging that Idaho's delegation of authority to implement and enforce certain Federal NSPS and NESHAP had been updated.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2024–0254. All documents, including the letters with enclosures sent to Idaho, in the docket are listed on the *https://www.regulations.gov* website or are available for public inspection during normal business hours at the Air and Radiation Division, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101–3144. Copies of Idaho's submittal are also available at the Idaho Department of Environmental Quality, 1410 N Hilton Street, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Bryan Holtrop, Air and Radiation Division, U.S. EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, (206) 553–4473 or *holtrop.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Delegation of NESHAP

Section 112(l) of the Clean Air Act (CAA) provides for the regulation of hazardous air pollutants through the promulgation of NESHAP. Those NESHAP promulgated prior to the CAA Amendments of 1990 are found in 40 Code of Federal Regulations (CFR) part 61. Those NESHAP promulgated subsequent to the CAA Amendments of 1990 are found in 40 CFR part 63. 40 CFR part 63 subpart E contains the criteria and procedures for ''straight delegation'' (delegation of unchanged standards) of NESHAP. *See* 40 CFR 63.91.

On April 20, 2023, Idaho notified the EPA that the State had updated its incorporation by reference of Federal NSPS and NESHAP to include many such standards, as they were published in final form in the CFR dated July 1, 2022. On May 10, 2023, the EPA sent Idaho a letter acknowledging that Idaho now has the authority to implement and enforce the NESHAP as specified by Idaho in its notice to the EPA, as provided for under previously approved delegation mechanisms. All notifications, applications, reports, and other correspondence required pursuant to the delegated NESHAP must be submitted to both the EPA Region 10 and to the Idaho Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to the EPA *or* a delegated State. In such cases, the submittals should be sent only to the Idaho Department of Environmental Quality. A copy of the EPA's letter to Idaho follows:

Ms. Tiffany Floyd
Air Quality Division Administrator
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Re: Approval of the Idaho Department of Environmental Quality's Request for Updated Delegation of Authority for National Emissions Standards for Hazardous Air Pollutants

Dear Ms. Floyd:

This letter is in response to your April 20, 2023, request to update and continue the delegation of certain National Emission Standards for Hazardous Air Pollutants. Consistent with the approved mechanism for streamlined delegation as described in 67 FR 3106 (January 23, 2002), the U.S. Environmental Protection Agency hereby grants this updated delegation request, as described below, to the Idaho Department of Environmental Quality for those sources under your jurisdiction for the identified NESHAP in effect on July 1, 2022.

Delegation Request

You have requested to update delegation of the 40 CFR parts 61 and 63 NESHAP standards that were previously delegated to IDEQ and to obtain delegation of new standards that the EPA has promulgated since your last delegation.

1. Your request for delegation of 40 CFR part 61, subpart M was limited to sources required to obtain permits under title V of the Clean Air Act.

2. Your request for delegation excluded subparts under 40 CFR part 61 regulating radon or radionuclides, specifically: subparts B, H, I, K, Q, R, T, and W.

3. Your request for delegation of all subparts of 40 CFR part 63 *except* N, AAAA, ZZZZ, BBBBBB, HHHHHH, JJJJJJ, WWWWWW, XXXXXX, and DDDDDDD, was limited to sources required to obtain permits under title V of the Clean Air Act.

IDEQ demonstrated that on March 28, 2023, IDEQ adopted the identified provisions of 40 CFR parts 61 and 63 unchanged and as in effect on July 1, 2022, into IDEQ's regulations in IDAPA 58.01.01.107.03(g) and (i).

Delegation of Authority

The EPA has determined that IDEQ's regulations continue to provide adequate and effective procedures for implementing and enforcing the NESHAP. Accordingly, the EPA hereby approves your request for an updated delegation of authority to implement and enforce the NESHAP standards identified in Enclosures A and B, subject to the following terms and conditions:

1. As requested by IDEQ:

a. The delegation of 40 CFR part 61, subpart M and all subparts of 40 CFR part 63 *except* N, AAAA, ZZZZ, BBBBBB, HHHHHH, JJJJJJ, WWWWWW, XXXXXX, and DDDDDDD is limited to implementation and enforcement of the NESHAP as of July 1, 2022, and is limited to sources that are required to obtain a permit under Idaho's title V program, regardless of whether a permit has yet been issued.

b. The delegation of all other requested NESHAP is limited to implementation and enforcement of the NESHAP as of July 1, 2022.

2. The EPA is not delegating the following provisions under 40 CFR part 63 to IDEQ:

a. Subpart B, which implements sections 112(g) and 112(j) of the Clean Air Act. The EPA has previously stated that a part 70 permitting authority does not need to apply for approval in order to use its own program to implement section 112(g). Furthermore, section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements. Therefore, delegation is not required to implement sections 112(g) and 112(j) and 40 CFR subpart B. *See* 59 FR 26429, 26447 (May 20, 1994) and 61 FR 68384, 68397 (December 27, 1996).

b. Subpart C, which lists hazardous air pollutants that have been deleted or refined. This subpart grants no authority that is necessary to implement or enforce the program and is therefore not delegable.

c. Subpart D, which implements section 112(d) of the Clean Air Act. Because this subpart explicitly states that it applies to a state or local agency acting pursuant to a permit program approved under title V of the Clean Air Act, delegation is unnecessary.

d. Subpart E, which establishes procedures for the EPA approval of state rules, programs, or other requirements to implement and enforce section 112 Federal rules and is not delegable.

3. The EPA is not delegating the provisions of the Consolidated Air Rule under 40 CFR part 65. As proposed on October 28, 1998 (63 FR 57748, 57784–57786) and promulgated on December 14, 2000, (65 FR 78268, 78272), the CAR comprises alternative compliance approaches to referencing subparts in 40 CFR parts 60 and 63. Therefore, formal delegation of the CAR is not required provided the state has received formal delegation of the referencing subpart.

4. Note that certain authorities are automatically granted to you because you have an approved part 70 program (see for example, 40 CFR 63.6(i)(1)). *See* 66 FR 48211, 48213 (September 19, 2001). However, you must have authority to implement and enforce the particular standard against the source as a matter of state law in order to implement this authority as a matter of Federal law.

5. The EPA is delegating the identified Federal standards as in effect on July 1, 2022. New NESHAP or NESHAP that are revised substantively after that date are not delegated to your agency; these remain the responsibility of the EPA.

a. Acceptance of this delegation does not commit your agency to request or accept delegation of future NESHAP standards and requirements.

b. The EPA encourages your agency to update your NESHAP delegation on an annual basis. This could coincide with the updating of the adoption by reference of the Federal NESHAP standards, which is important for maintaining the EPA's approval of your part 70 permitting program.

6. The EPA is not delegating authorities under 40 CFR parts 61 and 63 that specifically indicate they cannot be delegated, that require rulemaking to implement, that affect the stringency of the standard, equivalency determinations, or where national oversight is the only way to ensure national consistency.

7. The EPA is not delegating standards that have been vacated as a matter of Federal law.

8. This delegation is subject to the terms and conditions of the EPA's previous NESHAP delegations to IDEQ, 61 FR 64622 (December 6, 1996) and 67 FR 3106 (January 23, 2002), as updated by this letter.

9. Implementation and enforcement of the delegated NESHAP are subject to the *CAA 105 Air Base Grant Agreement Workplan* agreement between the state of Idaho and the EPA and its successor documents. The Agreement defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Integrated Compliance Information System for Air via the Exchange Network.

10. Enforcement of these delegated NESHAP in your jurisdiction will be the primary responsibility of your agency. Nevertheless, the EPA may exercise its concurrent enforcement authority pursuant to sections 112(l)(7) and 113 of the Clean Air Act and 40 CFR 63.90(d)(2) with respect to sources that are subject to the NESHAP.

11. Your agency and the EPA should communicate sufficiently to ensure that each is fully informed and current regarding interpretation of regulations (including any unique questions about applicability) and the compliance status of subject sources in your jurisdiction.

a. Any records or reports provided to or otherwise obtained by your agency should be made available to the EPA upon request.

b. In accordance with 40 CFR 61.16 and 63.15, the availability to the public of information provided to or otherwise obtained by the EPA in connection with this delegation shall be governed by 40 CFR part 2.

12. Your agency will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for these delegated NESHAP. The EPA may request notifications and reports from owners/operators and/or your agency, if needed.

13. Your agency will work with owners and operators of affected facilities subject to a NESHAP subpart to ensure all required information is submitted to your agency. Your assistance is requested to ensure that this information, including excess emission reports and summaries, is submitted to the EPA upon request, if needed.

14. Your agency will require affected facilities to use the methods specified in 40 CFR parts 61 and 63, as applicable, in performing source tests pursuant to the regulations. *See* 40 CFR 61.7 and 63.7.

15. Changes and alternatives:

a. For part 61 standards, your agency is not delegated the authorities under 40 CFR 61.04(b), 61.04(c), 61.05(c), 61.11, 61.12(d), 61.13(h)(1)(ii), 61.14(d), 61.14(g)(1)(ii), and 61.16. Such authorities and approvals remain the responsibility of the EPA.

b. For part 63 standards, your agency is not delegated the Category II authorities in 40 CFR 63.91(g)(2)(ii). Such authorities and approvals remain the responsibility of the EPA.

c. Your agency must maintain a record of all approved alternatives to monitoring, testing, and recordkeeping/reporting requirements and provide this list of alternatives to the EPA semi-annually or more frequently if requested by the EPA. The EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with your agency. If changes are disapproved, your agency must notify the owner/operator that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the owner/operator does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, your agency must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

16. Your agency's authority to implement and enforce NESHAP under this delegation does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. Consistent with previous Federal program approvals or delegations, the EPA will continue to implement the NESHAP in Indian Country because your agency has not demonstrated that it has authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country.

17. The EPA Administrator delegated to the EPA, Region 10 the authority to delegate the NESHAP to any state or local agency. A state or local agency that receives delegation from the EPA, Region 10 does not have the federally recognized authority to further delegate the NESHAP.

18. 40 CFR 63.96(b) contains the applicable procedures governing withdrawal of this delegation by the EPA or from this delegation by IDEQ, as applicable.

Unless we receive negative comments from you within ten days, this delegation is final and will be effective ten days from the date of this letter. Otherwise, no further correspondence to the EPA is needed from IDEQ to make this delegation effective. We will periodically publish a notice in the **Federal Register** informing the public of IDEQ's updated delegation. If you have any questions, please contact Geoffrey Glass of my staff at (206) 553–1847 or *glass.geoffrey@epa.gov.*

Sincerely,
Krishna Viswanathan, Director
Air and Radiation Division

II. Delegation of NSPS

Section 111(b) of the CAA requires the EPA to establish standards of performance for new stationary sources of air pollution through the promulgation of NSPS. These NSPS are found in 40 CFR part 60. According to section 111(c) of the CAA and 40 CFR 60.4(b), States may submit plans for approval by the Administrator to implement and enforce NSPS. Neither section 111 of the CAA nor 40 CFR part 60, however, prescribe a mechanism for such a delegation of authority.

On April 20, 2023, Idaho notified the EPA that the State had updated its incorporation by reference of Federal NSPS to include many such standards, as they were published in final form in the Code of Federal Regulations (CFR) dated July 1, 2022. On May 10, 2023, the EPA sent Idaho a letter acknowledging that Idaho now has the authority to implement and enforce the NSPS as specified by Idaho in its notice to the EPA, as provided for under previously approved delegation mechanisms. All notifications, applications, reports, and other correspondence required pursuant to the delegated NSPS must be submitted to both the EPA Region 10 and to the Idaho Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to the EPA or a delegated State. In such cases, the submittals should be sent only to the Idaho Department of Environmental Quality. A copy of the EPA's letter to Idaho follows:

Ms. Tiffany Floyd
Air Quality Division Administrator
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Re: Approval of the Idaho Department of Environmental Quality's Request for Updated Delegation of Authority for New Source Performance Standards

Dear Ms. Floyd:

This letter is in response to your April 20, 2023, request to update and continue the delegation of authority to implement and enforce certain New Source Performance Standards, 40 CFR part 60. After review of your request, the U.S. Environmental Protection Agency hereby grants this updated delegation request, as described below, to the Idaho Department of Environmental Quality for those sources under your jurisdiction for the identified NSPS in effect on July 1, 2022.

Delegation Request

You have requested to update delegation of the 40 CFR part 60 NSPS that were previously delegated to IDEQ and to obtain delegation of new standards that the EPA has promulgated since your last delegation.

IDEQ demonstrated that on March 28, 2023, IDEQ adopted the identified provisions of 40 CFR part 60 unchanged and as in effect on July 1, 2022, into IDEQ's regulations in IDAPA 58.01.01.107.03(f).

Delegation of Authority

The EPA has determined that IDEQ's regulations continue to provide adequate and effective procedures for implementing and enforcing the NSPS. Accordingly, the EPA hereby approves your request for an updated delegation of authority to implement and enforce the NSPS identified in Enclosure A, subject to the following terms and conditions:

1. As requested by IDEQ the delegation of all requested NSPS is limited to implementation and enforcement of the NSPS as of July 1, 2022.

2. The EPA is not delegating the following provisions under 40 CFR part 60 to IDEQ:

a. Subparts B and Ba, which apply to the adoption and submittal of state plans and actions taken to approve or disapprove such plans by the Administrator of the EPA. These subparts are not delegable.

b. Subpart C, which states that several other subparts contain emission guidelines and compliance times for the control of certain designated pollutants in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B of 40 CFR part 60. This subpart establishes no authority that is necessary to implement or enforce the program and is not delegable.

c. Subparts Cb, Cc, Cd, Ce, Cf, BBBB, DDDD, FFFF, MMMM, and UUUUa. These subparts specify the requirements for approval of state plans for the control of certain designated pollutants in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B or Ba of 40 CFR part 60.

3. The EPA is not delegating the provisions of the Consolidated Air Rule under 40 CFR part 65. As proposed on October 28, 1998, (63 FR 57748, 57784–57786) and promulgated on December 14, 2000, (65 FR 78268, 78272), the CAR comprises alternative compliance approaches to referencing subparts in 40 CFR parts 60 and 63. Therefore, formal delegation of the CAR is not required provided the state has received formal delegation of the referencing subpart.

4. The EPA is delegating the identified Federal standards as in effect on July 1, 2022. New NSPS or NSPS that are revised substantively after that date are not delegated to your agency; these remain the responsibility of the EPA.

a. Acceptance of this delegation does not commit your agency to request or accept delegation of future NSPS standards and requirements.

b. The EPA encourages your agency to update your NSPS delegation on an annual basis. This could coincide with the updating of the adoption by reference of the Federal NSPS standards, which is important for maintaining the EPA's approval of your part 70 permitting program.

5. The EPA is not delegating authorities under 40 CFR part 60 that specifically indicate they cannot be delegated, that require rulemaking to implement, that affect the stringency of the standard, equivalency determinations, or where national oversight is the only way to ensure national consistency.

6. The EPA is not delegating standards that have been vacated as a matter of Federal law.

7. Implementation and enforcement of the delegated NSPS are subject to the *CAA 105 Air Base Grant Agreement Work Plan* between the state of Idaho and the EPA and its successor documents. The agreement defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Integrated Compliance Information System for Air via the Exchange Network. Your agency will ensure that all relevant source notification and report information is entered as provided in the agreement into the specified EPA database system to meet your recordkeeping/reporting requirements.

8. Enforcement of these delegated NSPS in your jurisdiction will be the primary responsibility of your agency. Nevertheless, the EPA may exercise its concurrent enforcement authority pursuant to sections 111(d)(2) and 113 of the Clean Air Act with respect to sources that are subject to the NSPS.

9. Your agency and the EPA should communicate sufficiently to ensure that each is fully informed and current regarding interpretation of regulations (including any unique questions about applicability) and the compliance status of subject sources in your jurisdiction.

a. Any records or reports provided to or otherwise obtained by your agency should be made available to the EPA upon request.

b. In accordance with 40 CFR 60.9, the availability to the public of information provided to or otherwise obtained by the EPA in connection with this delegation shall be governed by 40 CFR part 2.

10. Your agency will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for these delegated NSPS. The EPA may request notifications and reports from owners/operators and/or your agency, if needed.

11. Your agency will work with owners and operators of affected facilities subject to an NSPS subpart to ensure all required information is submitted to your agency. Your assistance is requested to ensure that this information, including excess emission reports and summaries, is submitted to the EPA upon request, if needed.

12. Your agency will require affected facilities to use the methods specified in 40 CFR part 60, as applicable, in performing source tests pursuant to the regulations. *See* 40 CFR 60.8.

13. Changes and alternatives:

a. Your agency is not delegated the authorities under 40 CFR 60.4(b), 60.8(b) (terms 2 and 3, to the extent that the change represents an alternative or equivalent method or a *major change to testing* as defined in 40 CFR 63.90), 60.9, 60.11(b) (with respect to alternative methods), 60.11(e)(7)&(8), 60.13(a), 60.13(d)(2), and 60.13(g). Such authorities and approvals remain the responsibility of the EPA.

b. Your agency is not delegated the authority to approve a major change to monitoring under 40 CFR 60.13(i). A *major change to monitoring* is defined in 40 CFR 63.90.

c. Your agency must maintain a record of all approved alternatives to monitoring, testing, and recordkeeping/reporting requirements and provide this list of alternatives to the EPA semi-annually or more frequently if requested by the EPA. The EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with your agency. If changes are disapproved, your agency must notify the owner/operator that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the owner/operator does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, your agency must require the owner/operator to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

14. Your agency's authority to implement and enforce NSPS under this delegation does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. Consistent with previous Federal program approvals or delegations, the EPA will continue to implement the NSPS in Indian Country because your agency has not demonstrated authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country.

15. The EPA Administrator delegated to the EPA, Region 10 the authority to delegate the NSPS to any state or local agency. A state or local agency that receives delegation from the EPA, Region 10 does not have the federally recognized authority to further delegate the NSPS.

16. If the EPA determines that your agency's procedures for implementing or enforcing the NSPS are inadequate or are not being effectively carried out, this delegation may be revoked in whole or in part by written notice of the revocation. Any such revocation will be effective as of the date specified in the notice.

Unless we receive negative comments from you within ten days, this delegation is final and will be effective ten days from the date of this letter. Otherwise, no further correspondence to the EPA is needed from IDEQ to make this delegation effective. We will periodically publish a notice in the **Federal Register** informing the public of IDEQ's updated delegations. If you have any questions, please contact Geoffrey Glass of my staff at (206) 553–1847 or *glass.geoffrey@epa.gov.*

Sincerely,
Krishna Viswanathan, Director
Air and Radiation Division

This notice acknowledges the update of Idaho's delegation of authority to implement and enforce NSPS and NESHAP.

Dated: July 9, 2024.

Krishnaswamy Viswanathan,

Director, Air and Radiation Division, Region 10.

[FR Doc. 2024–15395 Filed 7–12–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12077–01–R6]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for CF Industries East Point, LLC, Waggaman Complex, Jefferson Parish, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated June 25, 2024, denying a Petition dated January 16, 2024, from the Harahan/River Ridge Air Quality Group, JOIN for Clean Air, Sierra Club, and Environmental Integrity Project. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) to CF Industries East Point, LLC, Waggaman Complex, located in Jefferson Parish, Waggaman, Louisiana.

FOR FURTHER INFORMATION CONTACT: Elizabeth Layton, EPA Region 6 Office, Air Permits Section, (214) 665–2136,

layton.elizabeth@epa.gov. The final order and petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

SUPPLEMENTARY INFORMATION: The EPA received a petition from the Harahan/River Ridge Air Quality Group, JOIN for Clean Air, Sierra Club, and Environmental Integrity Project dated January 16, 2024, requesting that the EPA object to the issuance of operating permit no.1340–00352–V9, issued by LDEQ to CF Industries East Point, LLC, Waggaman Complex in Waggaman, Jefferson Parish, Louisiana. On June 25, 2024, the EPA Administrator issued an order denying the Petition. The order explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuity no later than September 13, 2024.

Dated: July 8, 2024.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2024–15387 Filed 7–12–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–12085–01–OCSPP]

Pesticide Registration Review; Pesticide Dockets Opened for Review and Comment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the availability of and soliciting comment on the work plans and registration review case dockets for the following active ingredients: Banda de *Lupinus albus* doce, cyflumetofen, *Listeria* specific Bacteriophages, and *Streptomyces* strain K61.

DATES: Comments must be received on or before September 13, 2024.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in table 1 of unit II., through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information: The Chemical Review Manager for the pesticide of interest is identified in table 1 of unit II.

For general questions: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in table 1 of unit II.

II. What action is the Agency taking?

Pursuant to 40 CFR 155.50(b), this notice announces the availability of the EPA's work plans and registration review case dockets for the pesticides shown in Table 1 and opens a 60-day public comment period on the work plans and case dockets.

TABLE 1—WORK PLANS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Banda de *Lupinus albus* doce, Case Number 6318	EPA–HQ–OPP–2023–0357	Bibiana Oe, *oe.bibiana@epa.gov*, (202) 566–1538.
Cyflumetofen, Case Number 7463	EPA–HQ–OPP–2022–0194	Susan Bartow, *bartow.susan@epa.gov*, (202) 566–2280.
Listeria specific Bacteriophages, Case Number 5091	EPA–HQ–OPP–2024–0178	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, (202) 566–1516.
Streptomyces strain K61, Case Number 6066	EPA–HQ–OPP–2021–0832	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, (202) 566–1516.

III. What is the Agency's authority for taking this action?

EPA is conducting its registration review of the chemicals listed in Table 1 of Unit II. pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 3(g) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that pesticide registrations are to be reviewed every 15 years. Consistent with 40 CFR 155.57, in its final registration review decision, EPA will ultimately determine whether a pesticide continues to meet the registration standard in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)).

Pursuant to 40 CFR 155.50, EPA initiates a registration review by establishing a public docket for a pesticide registration review case. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency has consider during registration review. Consistent with 40 CFR 155.50(a), these dockets may include information from the Agency's files including, but not limited to, an overview of the registration review case status, a list of current product registrations and registrants, any **Federal Register** notices regarding any pending registration actions, any **Federal Register** notices regarding current or pending tolerances, risk assessments, bibliographies concerning current registrations, summaries of incident data, and any other pertinent data or information. EPA includes in

these dockets a Preliminary Work Plan (PWP), and in some cases a continuing work plan (CWP), summarizing information EPA has on the pesticide and the anticipated path forward.

Consistent with 40 CFR 155.50(b), EPA provides for at least a 60-day public comment period on work plans and registration review dockets. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary changes to a pesticide's workplan. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

For additional background on the registration review program, see: *https://www.epa.gov/pesticide-reevaluation.*

IV. What should I consider as I prepare comment for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through email or *https://www.regulations.gov.* If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

All comments should be submitted using the methods in **ADDRESSES** and must be received by the EPA on or before the closing date. These comments will become part of the docket for the pesticides included in table 1 of unit II. The Agency will consider all comments received by the closing date and may respond to comments in a ''Response to Comments Memorandum'' in the docket or the Final Work Plan (FWP), as appropriate.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 9, 2024.

Jean Overstreet,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2024–15468 Filed 7–12–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0751; FRL–12088–01–OCSPP]

Pesticide Registration Review; Decisions and Case Closures for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the availability of EPA's interim registration review decisions for the following chemicals: Copper 8-quinolinolate, DCNA, and norflurazon.

ADDRESSES: The dockets, identified by the docket identification (ID) number for the specific pesticide of interest provided in table 1 of unit II., are available online at *https://www.regulations.gov.* Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information: The Chemical Review Manager for the pesticide of interest identified in table 1 of unit II.

For general information: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in table 1 of unit II.

II. What action is the Agency taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's interim or final registration review decisions for the pesticides shown in Table 1. The interim and final registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE 1—INTERIM AND FINAL REGISTRATION REVIEW DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Copper 8-Quinolinolate, Case Number 5118	EPA–HQ–OPP–2010–0454	Peter Bergquist, *bergquist.peter@epa.gov,* (202) 566–0648.
DCNA, Case Number 0113	EPA–HQ–OPP–2016–0141	Kent Fothergill, *fothergill.kent@epa.gov,* (202) 566–1943.
Norflurazon, Case Number 0229	EPA–HQ–OPP–2012–0565	James Douglass, *douglass.james@epa.gov,* (202) 566–2343.

III. What is the Agency's authority for taking this action?

EPA is conducting its registration review of the chemicals listed in table 1 of unit II. pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 3(g) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that pesticide registrations are to be reviewed every 15 years. Consistent with 40 CFR 155.57, in its final registration review decision, EPA will ultimately determine whether a pesticide continues to meet the registration standard in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). As part of the registration review process, the Agency has completed interim or final registration review decisions for the pesticides in table 1 of unit II.

Prior to completing the interim or final registration review decisions in table 1 of unit II., EPA posted proposed interim decisions or proposed registration review decisions for these chemicals and invited the public to submit any comments or new information, consistent with 40 CFR 155.58(a). EPA considered and responded to any comments or information received during these public comment periods in the respective interim decision or final registration review decisions.

For additional background on the registration review program, see: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 9, 2024.

Jean Overstreet,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2024–15476 Filed 7–12–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1294; FR ID 231100]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before August 14, 2024.

ADDRESSES: Comments should be sent to *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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1294.

Title: FCC Authorization for Radio Service License—3.45 GHz Band Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, state, local, or tribal government, and not for profit institutions.

Number of Respondents and Responses: 52 respondents, 8,197 responses.

Estimated Time per Response: 5–20 hours.

Frequency of Response: Third party disclosure requirement; on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535, and 554 of the Communications Act of 1934.

Total Annual Burden: 9,198 hours.

Total Annual Cost: $10,353,000.

Needs and Uses: On March 17, 2021, the Federal Communications Commission (''Commission'' or ''FCC'') adopted a Second Report and Order, FCC 21–32, GN Docket No. WT–19–348 (Second Report and Order) that establishes rules for flexible-use wireless access to the 100 megahertz in the 3450–3550 MHz (3.45 GHz) band, creating the new 3.45 GHz Service. The rules will create additional capacity for

wireless broadband allowing full-power operations across the band in the entire contiguous United States, while also ensuring full protection of incumbent Federal operations remaining in particular locations. As part of this process, the Commission also adopted rules related to the relocation of incumbent non-Federal radiolocation operations, and reimbursement of expenses related to such relocation.

Sections 2.016 and 27.1603 require a 3.45 GHz Service licensee whose license area overlaps with a Cooperative Planning Area or Periodic Use Area, as defined in those sections, to coordinate deployments pursuant to those licenses in those areas with relevant Federal agencies. This coordination may take the form of a mutually acceptable operator-to-operator coordination agreement between the licensee and the relevant Federal agency. In the absence of such an agreement, this coordination will include a formal request for access through a Department of Defense online portal, which will include the submission of information related to the technical characteristics of the base stations and associated mobile units to be used in the covered area. It does not require a revision to the FCC Form 601.

Section 27.1605 requires non-Federal, secondary radiolocation operations which are relocating from the 3.45 GHz band to alternate spectrum to clear the band for new flexible-use wireless operations to submit certain information to a clearinghouse in order to ensure their relocation costs are fairly reimbursed. It does not require a revision to the FCC Form 601.

Section 27.1607 requires 3.45 GHz Service licensees to share certain information about their network operations in that band with operators in the adjacent Citizens Broadband Radio Service in order to enable the latter to synchronize their operations to reduce the risk of harmful interference. In response to a request by a Citizens Broadband Radio Service operator, a 3.45 GHz Service licensee must provide information to enable Time Division Duplex synchronization. The exact nature of the information to be provided will be determined by a negotiation between the two entities, conducted on a good faith basis. The 3.45 GHz Service licensee must keep the information current as its network operations change.

Section 27.14(w) requires 3.45 GHz Service licensees to provide information on the extent to which they provide service in their license areas. Licensees are required to file two such reports: The first four (4) years after its initial license grant and the second eight (8) years after such grant, unless they failed to meet the first set of performance requirements, in which case the second report is due seven (7) years after the initial grant. These reports are filed alongside the Form 601 and require no revisions to it.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–15484 Filed 7–12–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has clearance from the Office of Management and Budget (''OMB'') to send information requests, pursuant to compulsory process, to a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers. The information sought includes, among other things, data on the manufacturers' annual sales and marketing expenditures for cigarettes, smokeless tobacco products, and electronic devices used to heat non-combusted cigarettes, and sales of tobacco-free nicotine lozenges and pouches. The current OMB clearance for this information collection expires on August 31, 2024. Accordingly, the Commission is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance and to modify the existing clearance to allow for the collection of additional information concerning annual marketing expenditures for tobacco-free nicotine lozenges and pouches by smokeless tobacco manufacturers or related companies.

DATES: Comments must be filed by August 14, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. 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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mailstop CC–10507, Washington, DC 20580, (202) 326–2699.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 6(b) of the FTC Act, 15 U.S.C. 46(b), the Commission collects information on sales and/or marketing of cigarettes, smokeless tobacco products, tobacco-free nicotine lozenges and pouches, and electronic devices used to heat non-combusted cigarettes (collectively, ''subject products'') from manufacturers of cigarettes and smokeless tobacco products. Depending on the type of product a manufacturer produces, the Commission requests the information using two different instruments—that is, a Cigarette Order or a Smokeless Tobacco Order. The Commission compiles and publishes the data in two periodic reports.

The current OMB clearance to collect this information is valid through August 31, 2024 (OMB Control No. 3084–0134). On March 26, 2024, the Commission sought public comment on its proposal to renew its current OMB clearance, and to modify its existing clearance to allow for the collection of additional information concerning annual marketing expenditures for tobacco-free nicotine lozenges and pouches by smokeless tobacco manufacturers or related companies. *See* 89 FR 20967 (Mar. 26, 2024). In response to the **Federal Register** Notice, the Commission received three germane comments, consisting of comments from two individual commenters and the Truth Initiative, a nonprofit tobacco control organization. The following section contains a discussion of the comments and the Commission's responses.

B. Discussion of Comments

Two of the three comments express the commenters' strong support for the information collection,[1] while one individual commenter generally asserts that government resources spent on collecting this information should be spent on other ''much bigger issues''

[1] Comment from Truth Initiative (May 28, 2024), *available at https://www.regulations.gov/comment/FTC-2020-0049-0014* [hereinafter *Truth Initiative Comment*]; Comment from Andy Hernandez (Mar. 27, 2024), *available at https://www.regulations.gov/comment/FTC-2020-0049-0010.*

instead.[2] As discussed below, the Commission finds the collection of the information necessary and useful. Because the remainder of this comment is not germane to this clearance request, the following discussion focuses on the two supportive comments.[3]

Both supportive comments discuss the usefulness of the collection of the information. Specifically, both supportive comments note that the FTC's Cigarette and Smokeless Tobacco Reports provide critical data to researchers, policymakers, advocates, and the general public.[4] Truth Initiative also reiterates the ''powerful utility'' of the FTC's Cigarette and Smokeless Tobacco Reports by noting that the FTC's Cigarette and Smokeless Tobacco Reports ''provide information that is not available elsewhere,'' and ''often provide the basis for strong public health policies with regard to tobacco use and marketing.'' [5] Additionally, Truth Initiative expresses its approval of the Commission's practice of updating its Cigarette and Smokeless Tobacco Orders to ensure that the resulting reports continue to be relevant and reflect the current cigarette and smokeless tobacco market. Specifically, in this context, Truth Initiative agrees that there is a need to modify the existing clearance to allow for the collection of information concerning annual marketing expenditures for tobacco-free nicotine lozenges and pouches by smokeless tobacco manufacturers or related companies because (1) the sales of tobacco-free nicotine lozenges and pouches more than doubled between 2020 and 2022, and (2) these products appear to be especially popular with youth.[6] Before proceeding to discuss Truth Initiative's recommendations, the Commission would like to note that it appreciates the comments, as they underscore the necessity of this information collection.

As part of its comment, Truth Initiative also makes the following recommendations—each of which would expand the scope of the information collection. First, Truth Initiative recommends that the Commission request information regarding low nicotine cigarettes. Truth Initiative points out that, in December 2019, the U.S. Food and Drug Administration authorized the marketing by one company of two new tobacco products, which are combusted, filtered cigarettes that contain a reduced amount of nicotine compared to typical commercial cigarettes.[7] Truth Initiative acknowledges that ''the market share of these products is extremely small compared to other products,'' but notes that ''it is important that we understand the kind of marketing that is used to promote these products.'' [8] It recommends that the Commission add the manufacturer of these two products to the list of companies ''required to fill out future Cigarette Orders.'' [9]

The Commission's Cigarette Reports focus on the largest cigarette manufacturers and do not attempt to present a complete picture of the cigarette market. There are numerous smaller manufacturers and importers of cigarettes to which the Commission does not direct its cigarette Orders. Even if the Commission were to direct an order to the one company selling low nicotine cigarettes, it could not publish data regarding ''low nicotine'' cigarettes because doing so would result in publishing the one company's confidential commercial information. Accordingly, at this time, the Commission does not intend to seek information specifically regarding low nicotine cigarettes, or to direct an Order to the one company marketing such products.

Second, Truth Initiative suggests that the Commission collect and report on information about the content of advertisements for certain products, such as heated, non-combusted cigarettes and oral nicotine products; specifically, whether such products are being advertised as less harmful or better alternatives to traditional cigarette and smokeless tobacco products or as lifestyle products. In support of this recommendation, Truth Initiative notes that, for example, the marketing of oral pouch products as ''tobacco-free'' alternatives to smoking may lead consumers to ascribe lower risks to these products, despite a lack of evidence or proper federal authorization.[10] Truth Initiative also recommends that the Commission collect information on how ''tobacco companies'' use sponsored content in major media outlets to shift public perception. In support of this recommendation, Truth Initiative notes that ''[t]obacco companies . . . [are] spending millions on ads designed to reposition them as aligned with public health.'' [11]

With respect to Truth Initiative's suggestion that the Commission collect information on certain types of advertising content, the Commission notes that the Cigarette and Smokeless Tobacco Reports have historically provided data on sales and advertising expenditures. Additionally, the Commission believes that expanding the scope of the requests to include this type of information would divert critical resources from other mission priorities. Therefore, the Commission declines to make these proposed modifications.

Third, Truth Initiative recommends that the Commission collect marketing data on cigars, and notes that ''[y]outh use cigars at rates similar to cigarettes, making marketing information around cigars equally important.'' [12] The Commission respectfully declines the commenter's recommendation to seek marketing data on cigars as part of its information requests. The Commission believes that doing so would divert critical resources from other mission priorities. Fourth, Truth Initiative recommends that the Commission collect data on the organic, or unpaid, promotion of tobacco products by influencers on social media. According to Truth Initiative, the FTC's Cigarette and Smokeless Tobacco Reports leave ''out a crucial and significant segment of how tobacco product use is promoted'' because (1) ''[t]obacco content is commonplace on social media,'' and (2) ''[r]esearch shows exposure to tobacco content on social media doubles the odds of tobacco use among young people compared to those who are not exposed.'' [13] Truth Initiative also

[2] *See* Comment from DarkSoul Longlegs (Apr. 5, 2024), *available at https://www.regulations.gov/comment/FTC-2020-0049-0011.*

[3] Aside from the commenter's general assertion that ''[t]here are much bigger issues [that should be] track[ed],'' the remainder of the comment discusses general policy matters, such as access to healthcare, marijuana usage, and reproductive rights. *See id.*

[4] *See supra* note 1.

[5] *See Truth Initiative Comment, supra* note 1.

[6] *See id.* (citing Jan Birdsey et al., *Tobacco Product Use Among U.S. Middle and High School Students—National Youth Tobacco Survey, 2023,* 72 Morbidity and Mortality Wkly. Rep. 1173 (Nov. 3, 2023), *available at https://doi.org/10.15585/mmwr.mm7244a1*).

[7] Food and Drug Administration, *FDA Permits Sale of Two New Reduced Nicotine Cigarettes Through Premarket Tobacco Product Application Pathway* (Dec. 17, 2019), *available at https://www.fda.gov/news-events/press-announcements/fda-permits-sale-two-new-reduced-nicotine-cigarettes-through-premarket-tobacco-product-application.*

[8] *See Truth Initiative Comment, supra* note 1.

[9] *See id.*

[10] *See id.* (citing Patel Czaplicki et al., *Oral Nicotine Marketing Claims in Direct-Mail Advertising,* 31 Tobacco Control 663 (2022), *available at https://doi.org/10.1136/tobaccocontrol-2020-056446*).

[11] *See Truth Initiative Comment, supra* note 1 (citing Robin Koval et al., *Tobacco Industry Advertising: Efforts to Shift Public Perception of Big Tobacco with Paid Media in the USA,* 32 Tobacco Control 801 (2023), *available at https://doi.org/10.1136/tobaccocontrol-2021-057189*).

[12] *See Truth Initiative Comment, supra* note 1.

[13] *See id.* (citing Scott I. Donaldson et al., *Association Between Exposure to Tobacco Content on Social Media and Tobacco Use,* 176(9) JAMA

Continued

suggests the Commission try to quantify this information by gathering data from social media companies. As noted above, this type of gathering and analyzing advertising content and assessing the impact of that advertising is beyond the scope of these reports.[14]

Truth Initiative also notes that one of its studies, which examined vaping influencers on Instagram, found that ''most influencer posts promoting vaping products were unambiguous vaping advertisements promoting a specific brand or product,'' and the majority of them did not disclose the influencer's brand relationship.[15] Accordingly, Truth Initiative also urges the Commission to take enforcement actions against such social media posts on the basis that the influencers' failure to disclose their brand relationship constitutes a violation of the FTC's Endorsement Guides (16 CFR part 255). Because any such enforcement actions would be independent from the Commission's Cigarette Orders and Smokeless Tobacco Orders, this recommendation is not germane to this clearance request.

Accordingly, for the foregoing reasons, the Commission declines to make any adjustments to its prior burden estimates or to modify its initial proposal.

C. Overview of Information Collection

Title: FTC Cigarette and Smokeless Tobacco Data Collection.

OMB Control Number: 3084–0134.

Type of Review: Revision and extension of currently approved collection.

Likely Respondents: Parent companies of the largest cigarette companies and smokeless tobacco companies.

Estimated Annual Burden Hours: 3,540 hours.

Estimated Annual Labor Costs: $407,100.

Estimated Annual Non-Labor Costs: $0.

Abstract: Pursuant to section 6(b) of the FTC Act, 15 U.S.C. 46(b), the Commission collects information on sales and/or marketing of the subject products from manufacturers of cigarettes and smokeless tobacco products. The Commission then compiles and publishes the data in two periodic reports.

The Commission's section 6(b) Orders seek data regarding, among other things: (1) the cigarette or smokeless tobacco sales of industry members; (2) how much industry members spend advertising and promoting their cigarette or smokeless tobacco products, and the specific amounts spent in each of a number of specified expenditure categories; (3) whether industry members are involved in the appearance of their cigarette or smokeless tobacco products or brand imagery in television shows, motion pictures, on the internet, or on social media; (4) how much industry members spend on advertising intended to reduce youth cigarette or smokeless tobacco usage; (5) the events, if any, during which industry members' cigarette or smokeless tobacco brands are televised; and (6) how much industry members spend on public entertainment events promoting their companies but not specific cigarette or smokeless tobacco products or such products generally. The information requests to cigarette companies also seek information pertaining to the annual sales, giveaways, and marketing expenditures for electronic devices used to heat non-combusted cigarette products, and the information requests to smokeless tobacco companies also seek information pertaining to the annual unit and dollar sales of tobacco-free nicotine lozenges and pouches. Once the Commission's clearance request has been approved by OMB, the Commission's information requests to smokeless tobacco companies will also seek information concerning sales and advertising and promotional expenditures for tobacco-free nicotine lozenges and pouches, including the specific amounts spent in each of a number of specified expenditure categories.

D. Request for Comment

Pursuant to OMB regulations, 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501 *et seq.* (''PRA''), the FTC is providing this second opportunity for public comment while seeking OMB approval to renew and modify the pre-existing clearance as described above. For more details about the information collection and the basis for the calculations summarized above, see 89 FR 20967.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for ensuring that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential''—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–15480 Filed 7–12–24; 8:45 am]

BILLING CODE 6750–01–P

Pediatrics 878 (July 11, 2022), *available at https://doi.org/10.1001/jamapediatrics.2022.2223;* Daniel K. Cortese et al., *Smoking Selfies: Using Instagram to Explore Young Women's Smoking Behaviors,* Social Media + Society 4(3) (Aug. 7, 2018), *available at https://doi.org/10.1177/205630511879076*).

[14] Truth Initiative recognizes that gathering information from social media companies is beyond the scope of these information requests. *See Truth Initiative Comment, supra* note 1.

[15] *Truth Initiative Comment, supra* note 1 (citing Nathan A. Silver et al., *Examining Influencer Compliance with Advertising Regulations in Branded Vaping Content on Instagram,* 10 Front. Public Health (Jan. 9, 2023), *available at https://doi.org/10.3389/fpubh.2022.1001115*).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1826–N]

Medicare Program; Announcement of the Advisory Panel on Hospital Outpatient Payment Meeting—August 26–27, 2024

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This meeting notice announces the virtual meeting of the Advisory Panel on Hospital Outpatient Payment (the Panel) on Monday, August 26, 2024 and Tuesday, August 27, 2024. The purpose of the Panel is to advise the Secretary on the clinical integrity of the Ambulatory Payment Classification groups and their associated weights, which are major elements of the Medicare Hospital Outpatient Prospective Payment System and the Ambulatory Surgical Center payment system, and supervision of hospital outpatient therapeutic services.

DATES:

Virtual Meeting Dates: Monday, August 26, 2024 and Tuesday, August

27, 2024, from 9:30 a.m. to 5:00 p.m. Eastern Daylight Time (EDT) each day. The times listed in this notice are EDT and are approximate times. Consequently, the meetings may last longer or be shorter than the times listed in this notice but will not begin before the posted time.

Deadline for presentations and comments: Presentations or comment letters must be received by 5:00 p.m. EDT on Friday, August 02, 2024. Presentations or comment letters must be submitted through the ''Hospital Outpatient Payment (HOP) Panel Meeting Presentation & Comment Letters'' module. To access the module, go to *https://mearis.cms.gov* to register, log in, and submit your presentation or comment letter. CMS can only accept HOP Panel Meeting presentations and comment letters that are submitted via MEARIS™. Please note that with the submissions in MEARIS™, CMS no longer requires the completion or submission of form CMS–20017 as part of the presentation or comment letter package. Therefore, submitters do not need to complete this form.

Presentations and comment letters that are not received by the due date and time will be considered late or incomplete and will not be included on the agenda. Presentations and comment letters may not be revised once they are submitted. If a presentation or comment letter requires changes, a new submittal must be submitted by August 02, 2024.

Please see additional information regarding the submission of section 508 compliant presentation and comment letter materials in section ''III. Presentations and Comment Letters'' of this notice.

ADDRESSES:

Virtual meeting location and webinar: The August 26–27, 2024 meeting will be held virtually via Zoom only. Closed captioning will be available on the webinar. Webinar information will appear on the final meeting agenda, which will be posted on our website when available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.*

Websites: For additional information on the Panel, including the Panel charter, and updates to the Panel's activities, we refer readers to view our website at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.* Information about the Panel and its membership in the Federal Advisory Committee Act database is located at: *https://www.facadatabase.gov.*

Virtual meeting registration: While there is no meeting registration, presenters must be identified and included as part of the MEARIS™ presentation submission process by the presentation and comment letter deadline specified in the **DATES** section of this notice. We note that no advanced registration is required for participants who plan to view the Panel meeting via Zoom webinar or who wish to make a public comment during the meeting.

FOR FURTHER INFORMATION CONTACT: Nicole Marcos, Designated Federal Official at (202) 690–7484 or via email at: *APCPanel@cms.hhs.gov.*

Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act) and is allowed by section 222 of the Public Health Service Act to consult with an expert outside panel, such as the Advisory Panel on Hospital Outpatient Payment (the Panel), regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights. The Panel is governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended (5 U.S.C. appendix 2), to set forth standards for the formation and use of advisory panels. We consider the technical advice provided by the Panel as we prepare the final rule and the following calendar year's proposed rule to update the Hospital Outpatient Prospective Payment System (OPPS).

II. Virtual Meeting Agenda

The agenda for the August 26 and 27, 2024 virtual Panel meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Reconfiguring APCs.
- Evaluating APC group weights.
- Reviewing packaging costs of items and services, including drugs and devices, into procedures and services, including the methodology for packaging and the impact of packaging the cost of those items and services on APC group structure and payment.
- Removing procedures from the inpatient only list for payment under the OPPS.
- Using claims and cost report data for the Centers for Medicare & Medicaid Services' (CMS) determination of APC group costs.
- Addressing other technical issues concerning APC group structure.
- Evaluating the required level of supervision for hospital outpatient services.
- OPPS APC rates for covered Ambulatory Surgical Center (ASC) procedures.

The agenda will be posted on our website at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups* approximately 1 week before the meeting.

Virtual Meeting Information Updates: The actual meeting hours and days will be posted in the agenda. As information and updates regarding this webinar and listen-only teleconference, including the agenda, become available, they will be posted to our website at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.*

III. Presentations and Comment Letters

The subject matter of any presentation and comment letter must be within the scope of the Panel as designated in the Charter. Any presentations or comments outside of the scope of the Panel will be returned or requested for amendment. Unrelated topics include but are not limited to: the conversion factor; charge compression; revisions to the cost report; pass-through payments; correct coding; new technology applications (including supporting information/documentation); provider payment adjustments; supervision of hospital outpatient diagnostic services; and the types of practitioners that are permitted to supervise hospital outpatient services. The Panel may not recommend that services be designated as nonsurgical extended duration therapeutic services. Presentations or comment letters that address OPPS APC rates as they relate to covered ASC procedures are within the scope of the Panel; however, ASC payment rates, ASC payment indicators, the ASC covered procedures list, or other ASC payment system matters will be considered out of scope. The Panel may use data collected or developed by entities and organizations other than the Department of Health and Human Services or CMS in conducting its review. We recommend organizations submit data for CMS staff and the Panel's review. All presentations are limited to 5 minutes, regardless of the number of individuals or organizations represented by a single presentation.

Presenters may use their 5 minutes to represent either one or more agenda items.

Section 508 Compliance

For this meeting, we are aiming to have all presentations and comment letters available on our website. Materials on our website must be section 508 compliant to ensure access to Federal employees and members of the public with and without disabilities. Presenters and commenters should reference the guidance on making documents section 508 compliant as they draft their submissions, and, whenever possible, submit their presentations and comment letters in a 508 compliant form. The section 508 guidance is available at: *https://www.cms.gov/research-statistics-data-and-systems/cms-information-technology/section508.* Presentations and comment letters should limit the use of graphs or pictures. Any use of these visual depictions must include alternate text that verbally describes what these visuals convey.

We will review presentations and comment letters for section 508 compliance and place compliant materials on our website. As resources permit, we will also convert non-compliant submissions to section 508-compliant forms and offer assistance to submitters who are making their submissions section 508-compliant. All section 508-compliant presentations and comment letters will be made available on the CMS website. If difficulties are encountered accessing the materials, please contact the Designated Federal Official in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

IV. Virtual Formal Presentations

In addition to formal presentations (limited to 5 minutes total per presentation), there will be an opportunity during the meeting for public comments as time permits (limited to 1 minute for each individual and a total of 3 minutes per organization).

V. Panel Recommendations and Discussions

The Panel's recommendations at any Panel meeting generally are not final until they have been reviewed and approved by the Panel on the last day of the meeting, prior to the final adjournment. These recommendations will be posted to our website after the meeting.

VI. Membership Appointments to the Advisory Panel on Hospital Outpatient Payment

The Panel Charter provides that the Panel shall meet up to 3 times annually. We consider the technical advice provided by the Panel as we prepare the update to the calendar year OPPS proposed and final rules. The Panel shall consist of a chair and up to 15 members who are full-time employees of hospitals, hospital systems, or other Medicare providers that are subject to the OPPS. The Panel may also include a representative of a provider with ASC expertise, who advises CMS only on OPPS APC rates, as appropriate, impacting ASC covered procedures within the context and purview of the Panel's scope. The Secretary or a designee selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations of candidates determined to have the required expertise. For supervision deliberations, the Panel may include members that represent the interests of critical access hospitals, who advise CMS only regarding the level of supervision for hospital outpatient therapeutic services. New appointments are made in a manner that ensures a balanced membership under the Federal Advisory Committee Act guidelines. The Secretary rechartered the Panel in 2022 for a 2-year period effective through November 20, 2024. The current charter is available on the CMS website at: *https://www.cms.gov/files/document/2022-hop-panel-charter.pdf.* New appointments are made in a manner that ensures a balanced membership under the Federal Advisory Committee Act guidelines. The Panel consists of the following current members and a Chair:

- E.L. Hambrick, M.D., J.D., CMS Chairperson.
- Becky Bean, BS, MHA/MBA, PharmD.
- Thomas Capco, BSRT, RRT, CPFT.
- Nancy Dawson, MD, FACP.
- Blake Dirksen, MS, DABR.
- Brandon Fazio, BS.
- Rahul Seth, DO, FASCO.
- Wendi Smith Lloyd, CPC, COC, CPMA, COSC.
- William Tettelbach, MD, FACP, FIDSA, FUHM, MAPWCA, CWSP.

Request and Submission of the Panel Nominations

The Request for Nominations to the Advisory Panel on Hospital Outpatient Payment notice (87 FR 68499) provided for nominations to be accepted through February 13, 2023 or after that date at CMS's discretion.

As a result of that notice, we are announcing 3 new members to the Panel. These 3 new Panel member appointments will assure that we continue to have a Chair and up to 15 members available to attend our scheduled meeting.

New Appointments to the Panel

New members of the Panel and their terms are as follows:

- Jennifer Artigue, RHIT, CCS. Term: May 13, 2024–May 12, 2028.
- Scott Manaker, MD, Ph.D. Term: July 20, 2024–July 19, 2028.
- Caroline Zeller, DDS, MPH. Term: May 13, 2024–May 12, 2028.

We currently accept nominations on a continuous basis to fill upcoming panel vacancies. We encourage additional submissions. Any interested person or organization may nominate qualified individuals. Self-nominations from qualified individuals are also accepted. Nominations must be submitted through the ''Hospital Outpatient Payment (HOP) Panel Member Nomination'' module on MEARIS™. To access the module, visit *https://mearis.cms.gov* to register, log in, and submit your nomination. We can only accept HOP Panel Member nominations that are submitted via MEARIS™.

VII. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–15393 Filed 7–12–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10440]

Agency Information Collection Activities: Submission for OMB Review; 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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by *August 14, 2024.*

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 30-day Review—Open for Public Comments'' or by using the search function.

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 Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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 (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Benefits Exchanges, Medicaid and CHIP Agencies; *Use:* Section 1413 of the Affordable Care Act directs the Secretary of Health and Human Services to develop and provide to each state a single, streamlined application form that may be used to apply for coverage through a Marketplace and for APTC/CSR, Medicaid, and CHIP (which we refer to collectively as insurance affordability programs). The application must be structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who may qualify for the programs by developing materials at appropriate literacy levels and ensuring accessibility.

Regulations at 45 CFR 155.405(a) provides more detail about the application that must be used by Marketplaces to determine eligibility and to collect information necessary for enrollment. Eligibility standards for the Marketplace are set forth in 45 CFR 155.305. The information will be required of each applicant upon initial application, with some subsequent information collections for the purposes of confirming accuracy of previous submissions and for changes in an applicant's circumstances. 42 CFR 435.907 and § 457.330 establish the standards for state Medicaid and CHIP agencies related to the use of the application. CMS has designed a dynamic electronic application that will tailor the amount of data required from an applicant based on the applicant's circumstances and responses to particular questions in the FFM (please note SBM implementations may vary but the essence of the data collection must adhere to the same parameters). The paper version of the application will not be tailored in the same way but will require only the data necessary to determine eligibility.

Information collected by the Marketplace, Medicaid or CHIP agency will be used to determine eligibility for coverage through the Marketplace and insurance affordability programs (*i.e.,* Medicaid, CHIP, and APTC), and assist consumers in enrolling in a QHP if eligible. Applicants include anyone who may be eligible for coverage through any of these programs. Additionally, this application provides consumers interested in voting resources. *Form Number:* CMS–10440 (OMB control number: 0938–1191); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 5,550,000; *Total Annual Responses:* 5,550,000; *Total Annual Hours:* 2,446,440. (For policy questions regarding this collection contact Erin Richardson at 202–619–0630.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–15473 Filed 7–12–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–2908]

Cellular and Gene Therapies Interactive Site Tours Program for Regulatory Project Managers and Reviewers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or the Agency) Center for Biologics Evaluation and Research (CBER), Office of Therapeutic Products (OTP) is announcing the Cellular and Gene Therapies Interactive Site Tours Program (the Interactive Site Tours Program). This program is

intended to give CBER regulatory project managers and/or reviewers an opportunity to tour biotechnology manufacturing facilities developing cellular and gene therapy products, and to exchange regulatory experiences with their industry counterparts. With this program, CBER intends to enhance review efficiency and quality by providing CBER staff with a better understanding of the biotechnology manufacturing industry and its operations. The purpose of this notice is to invite companies developing cellular and gene therapy products interested in participating in this program to contact OTP for more information.

DATES: Companies may send proposed agendas to the Agency by August 14, 2024.

FOR FURTHER INFORMATION CONTACT: Lori Tull, Office of Review Management and Regulatory Review, Office of Therapeutic Products, Center for Biologics Evaluation and Research, Food and Drug Administration, 240–402–8361, *Lori.Tull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under section 351 of the Public Health Service Act (PHS Act), FDA is authorized to license biological products if they have been demonstrated to be ''safe, pure, and potent.'' CBER is one of two Centers at FDA that regulates biological products for human use under applicable statutory provisions of the PHS Act and the Federal Food, Drug, and Cosmetic Act (FD&C Act). Section 3033 of the 21st Century Cures Act (Cures Act) (Pub. L. 114–255), was signed into law on December 13, 2016, and amended section 506 of the FD&C Act to specifically address the expedited development and review of certain regenerative medicine therapies, including cell therapies, therapeutic tissue engineering products, and human cell and tissue products.

An important part of CBER's commitment to make safe and effective biological products available to all Americans is optimizing the efficiency and quality of the biologics review process. To support this goal, CBER has initiated various training and development programs to promote high performance in its regulatory project management and review staff. OTP seeks to enhance review efficiency and review quality by providing staff with a better understanding of the biotechnology industry and its operations. To this end, CBER/OTP is offering regulatory project managers and reviewers the opportunity to tour biotechnology manufacturing facilities. The goals are to provide the following: (1) firsthand exposure to industry's product development processes and (2) a venue for sharing information about project management best practices (but not product-specific information) with industry representatives.

II. The Interactive Site Tours Program

In this program, which may last a few days, a small group of OTP regulatory project managers and/or reviewers, potentially also including senior level staff, can observe operations of biologics manufacturing and/or packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. Neither this tour nor any part of the program is intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but is meant rather to provide an avenue for open dialogue between CBER/OTP staff and industry representatives. During the Interactive Site Tours Program, regulatory project managers and reviewers may also participate in daily workshops with their industry counterparts, focusing on selective regulatory issues important to both OTP staff and industry. The primary objective of the daily workshops is to understand the team approach to biological product development, including discovery, nonclinical and clinical evaluation, postmarketing activities, and regulatory submission operations. The overall benefit to regulatory project managers and reviewers will be exposure to project management, team techniques, and processes employed by the biotechnology industry. By participating in this program, the regulatory project managers and reviewers will gain a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the Interactive Site Tours Program will be the responsibility of OTP; therefore, selection of facility tour sites will be based on the availability of funds and resources for the program. Selection will also be based on firms having a favorable facility status as determined by FDA's Office of Regulatory Affairs District Offices in the firms' respective locations. Firm participation in the program is limited to companies developing cellular and/or gene therapy products. Firms that want to learn more about this opportunity or that are interested in offering a site tour should respond by sending a proposed agenda via email directly to Lori Tull (see **DATES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: July 9, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–15351 Filed 7–12–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–3165]

Takeda Pharmaceuticals U.S.A., Inc.; Withdrawal of Approval of New Drug Application for EXKIVITY (Mobocertinib Succinate) Capsule, Equivalent to 40 Milligrams Base

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of the new drug application (NDA) for EXKIVITY (mobocertinib succinate) capsule, equivalent to (EQ) 40 milligrams (mg) base, held by Takeda Pharmaceuticals U.S.A., Inc., 95 Hayden Ave., Lexington, MA 02421 (Takeda). Takeda has voluntarily requested that FDA withdraw approval of this application and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of July 15, 2024.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On September 15, 2021, FDA approved NDA 215310 for EXKIVITY (mobocertinib succinate) capsule, EQ 40 mg base, for the treatment of adult patients with locally advanced or metastatic non-small cell lung cancer (NSCLC) with epidermal growth factor receptor (EGFR) exon 20 insertion mutations, as detected by an FDA-approved test, whose disease has progressed on or after platinum-based chemotherapy (EGFR exon 20 insertion-mutated NSCLC), under the Agency's accelerated approval regulations, 21 CFR part 314, subpart H. The accelerated approval of EXKIVITY (mobocertinib succinate) capsule, EQ 40 mg base, for EGFR exon 20 insertion-mutated NSCLC included a required postmarketing trial intended to verify the clinical benefit of EXKIVITY.

On October 19, 2023, FDA met with Takeda to discuss the voluntary withdrawal of EXKIVITY (mobocertinib succinate) capsule, EQ 40 mg base, according to § 314.150(d) (21 CFR 314.150(d)). On October 25, 2023, FDA recommended the applicant voluntarily request withdrawal of approval of EXKIVITY (mobocertinib succinate) capsule, EQ 40 mg base, for EGFR exon 20 insertion-mutated NSCLC according to § 314.150(d) because the postmarketing trial did not verify clinical benefit. FDA also requested Takeda waive its opportunity for a hearing.

On March 15, 2024, Takeda submitted a letter asking FDA to withdraw approval of NDA 215310 for EXKIVITY (mobocertinib succinate) capsule, EQ 40 mg base, according to § 314.150(d) and waiving its opportunity for a hearing.

For the reasons discussed above, and in accordance with the applicant's request, approval of NDA 215310 for EXKIVITY (mobocertinib succinate) capsule, EQ 40 mg base, and all amendments and supplements thereto, is withdrawn under § 314.150(d). Distribution of EXKIVITY (mobocertinib succinate) capsule, EQ 40 mg base, into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)).

Dated: July 9, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–15371 Filed 7–12–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council on Blood Stem Cell Transplantation

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Council on Blood Stem Cell Transplantation (ACBSCT or Advisory Council) has scheduled public meetings. Information about the Advisory Council and the agenda for these meetings can be found on the ACBSCT website at *https://bloodstemcell.hrsa.gov/about/advisory-council.*

DATES: Thursday, August 22, 2024, 2:00 p.m.–6:00 p.m. Eastern Standard Time; and Thursday, October 24, 2024, 2:00 p.m.–6:00 p.m. Eastern Standard Time.

ADDRESSES: Both meetings will be held virtually by webinar. A link to register and join each meeting will be posted at least 10 days prior to the meeting date at: *https://bloodstemcell.hrsa.gov/about/advisory-council.*

FOR FURTHER INFORMATION CONTACT: Shelley Tims Grant, Designated Federal Official, HRSA Health Systems Bureau, Division of Transplantation, 5600 Fishers Lane, 8W–67, Rockville, Maryland 20857; 301–443–8036; or *ACBSCTHRSA@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACBSCT provides advice and recommendations to the Secretary of Health and Human Services on policy, program development, and other matters of significance concerning the activities under the authority of 42 U.S.C. 274k (Section 379 of the Public Health Service Act), as amended, and Public Law 109–129, as amended. The Advisory Council may transmit its recommendations through the HRSA Administrator on matters related to the activities of the C.W. Bill Young Cell Transplantation Program and National Cord Blood Inventory.

The agenda for the August 22, 2024, meeting is being finalized and may include the following topics: criteria for defining a high-quality cord blood unit for banking specifications; the unmet needs in blood stem cell transplantation and cellular therapy; updates on transplant outcomes by different donor sources; strategies to improve rates of donation for adult blood stem cell donors; and other areas to increase blood stem cell donation and transplantation. The agenda for the October 24, 2024, meeting will be determined based on discussion, priorities, and/or action items from the August 22, 2024, meeting. All agenda items will be posted on the Advisory Council's website no later than 10 days prior to the respective meeting dates. Agenda items are subject to change as priorities dictate. Interested individuals are encouraged to monitor the Advisory Council's website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meetings; oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to ACBSCT should be sent to Shelley Tims Grant, using the contact information above, at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or other reasonable accommodations should notify Advisory Council at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–15391 Filed 7–12–24; 8:45 am]

BILLING CODE 4165–15–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; Rural Communities Opioid Response Program Performance Measures, OMB No 0906–0044, Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

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 August 14, 2024.

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 Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Rural Communities Opioid Response Program (RCORP) Performance Measures, OMB No. 0906–0044–Revision

Abstract: HRSA administers RCORP, which is authorized by Section 711(b)(5) of the Social Security Act (42 U.S.C. 912(b)(5)) and is a multi-initiative program that aims to: (1) support treatment for and prevention of substance use disorder (SUD), including opioid use disorder (OUD); and (2) reduce morbidity and mortality associated with SUD, including OUD, by improving access to and delivering prevention, treatment, and recovery support services to high-risk rural communities. To support this purpose, RCORP grant initiatives include:

- RCORP—Implementation grants fund established networks and consortia to deliver SUD/OUD prevention, treatment, and recovery activities in high-risk rural communities;
- RCORP—Psychostimulant Support grants aim to strengthen and expand access to prevention, treatment, and recovery services for individuals in rural areas who misuse psychostimulants, to enhance their ability to access treatment and move toward recovery;
- RCORP—Medication Assisted Treatment Access grants aim to establish new access points in rural facilities where none currently exist;
- RCORP—Behavioral Health Care support grants aim to expand access to and quality of behavioral health care services at the individual-, provider-, and community-levels;
- RCORP—Overdose Response recipients address immediate needs in rural areas through improving access to, capacity for, and sustainability of prevention, treatment, and recovery services for SUD;
- RCORP—Child and Adolescent Behavioral Health grants aim to establish and expand sustainable behavioral health care services for children and adolescents aged 5–17 years who live in rural communities; and
- RCORP—Neonatal Abstinence Syndrome grants aim to reduce the incidence and impact of Neonatal Abstinence Syndrome in rural communities by improving systems of care, family supports, and social determinants of health.

Note that additional grant initiatives may be added pending fiscal year 2025 and future fiscal year appropriations.

HRSA currently collects information about RCORP grants using approved performance measures. HRSA developed separate performance measures for RCORP's new Overdose Response, Behavioral Health, and Neonatal Abstinence Syndrome grants and seeks OMB approval for the new performance measures.

A 60-day notice published in the **Federal Register** on May 7, 2024, vol. 89, No. 89; pp. 38163–64. There were no public comments.

Need and Proposed Use of the Information: Due to the growth in the number of grant initiatives included within RCORP, as well as emerging SUD and other behavioral health trends in rural communities, HRSA is submitting a revised ICR that includes measures for RCORP's new Overdose Response, Child and Adolescent Behavioral Health, and Neonatal Abstinence Syndrome grants.

For this program, performance measures were developed to provide data on each RCORP initiative and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures cover the principal topic areas of interest to HRSA's Federal Office of Rural Health Policy, including: (a) provision of, and referral to, rural behavioral health care services, including SUD prevention, treatment and recovery support services; (b) behavioral health care, including SUD prevention, treatment, and recovery, process and outcomes; (c) education of health care providers and community members; (d) emerging trends in rural behavioral health care needs and areas of concern; and (e) consortium strength and sustainability. All measures will speak to the progress on meeting the set goals of the Federal Office of Rural Health Policy.

Likely Respondents: The respondents will be the recipients of the RCORP grants.

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	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
RCORP—Implementation	290	2	580	1.24	719.20
RCORP—Psychostimulant Support	15	1	15	1.30	19.50
RCORP—Medication Assisted Treatment Access	11	1	11	1.95	21.45
RCORP—Behavioral Health Care Support	58	1	58	2.02	117.16
Rural Communities Opioid Response—Overdose Response (NEW)	47	3	141	0.56	78.96
RCORP—Child and Adolescent Behavioral Health (NEW)	9	2	18	0.48	8.64
RCORP—Neonatal Abstinence Syndrome (NEW)	41	4	164	2.31	378.84
Total	471		987		1,343.75

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–15441 Filed 7–12–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 14, 2024.

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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041, or *PRA@HHS.GOV*. When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: OASH Performance Project Report for Grants and Cooperative Agreements.

Type of Collection: New.

OMB No. 0990–NEW—Office of the Assistant Secretary for Health.

Abstract: The Office of the Assistant Secretary for Health (OASH) is seeking OMB approval on a new information collection, the OASH Periodic Performance Project Report for Grants and Cooperative Agreements (hereafter the OASH PPR). The purpose of this data collection is to gather quantitative and qualitative information common to the assessment of recipient performance on individual grants and cooperative agreements (collectively, grants) managed in OASH. OASH will collect common data elements measuring the performance of each recipient against the approved grant project plan, including progress toward goals and outcomes as required by 45 CFR 75.342(b)(2).

OASH oversees a broad range of grant programs within the Office of the Secretary (OS), Department of Health and Human Services (HHS). The current active OASH programs with discretionary grants (with assistance listing number) include: Public Awareness Campaigns on Embryo Adoption (93.007); Research on Research Integrity (93.085); Advancing System Improvements for Key Issues in Women's Health (93.088); Community Programs to Improve Minority Health Grant Programs (93.137); Family Planning Services (93.217); Family Planning Personnel Training (93.260); Teenage Pregnancy Prevention Program (93.297); Public Health Service Evaluation Funds (93.343); Research, Monitoring and Outcomes Definitions for Vaccine Safety (93.344); Minority HIV/AIDS Fund (93.899); Family Planning Service Delivery Improvement Research Grants (93.974); and National Health Promotion (93.990). OASH grants span a wide range of project types, including service, demonstration project, evaluation, research, training, and conference projects. Within each program, the awards are subdivided into cohorts aligned with the notices of funding opportunity under which OASH competed the awards. Currently, there are 47 cohorts of active awards across OASH. In any given year, OASH programs collectively monitor 450–550 active awards with another 200–300 inactive awards awaiting final reports as a prerequisite to closing the grant.

The collection is needed to enhance project performance information and simplify reporting under 45 CFR 75.301. Each recipient currently must submit a quarterly Federal Financial Report (FFR or SF–425)(45 CFR 75.341) and a periodic Performance Progress Report (PPR) for each grant (45 CFR 75.342(b)(2). PPR reporting periods in OASH are scheduled quarterly, semi-annually, or annually, depending on the need determined by the program office using a narrative format that can vary by cohort. The PPR schedule is specifically aligned with the quarterly FFRs whenever possible to create a complete snapshot of the project's progress at the end of the reporting period.

The common elements identified in the new collection for OASH programs will standardize the collection of the required information (45 CFR 75.342(b)(2)) including: (1) a comparison of the actual accomplishments to the objectives of the award for the period; (2) the reasons why established goals were not met; and (3) pertinent information, analysis and explanation of cost overruns or high unit costs. The common elements include reporting on publications, including data sets and other work products, to facilitate implementation of OSTP Memorandum Ensuring Free, Immediate, and Equitable Access Federally Funded Research (August 25, 2022). The new information collection will limit the content of the report to those activities taking place during the reporting period (*i.e.,* quarterly, semiannually, or annually). The information collection is structured to facilitate program review across reporting periods. This will allow OASH to identify and improve program outcomes, share lessons learned, and spread the adoption of promising practices among its grant recipients and other HHS awarding agencies.

The content of the new collection is structured for web-based data collection under 7 headings: Report Header; Project Progress; Significant Project Accomplishments; Broader Program Impacts; Products and Dissemination; Collaboration and Partnering Activities; and Project Evaluation Activities. Information will be prepopulated based on the login credentials for the user submitting the report and the specific grant being reported. Not all grants will have reportable activities under all headings (*e.g.,* not all grants have an evaluation component embedded in the project). However, most OASH grants will have reportable information under most headings. Program offices with additional reporting programmatic information collections will eventually transition collection of any overlapping data elements to this OASH PPR. During the transition, OASH will not require grant recipients to provide the same information twice.

Likely Respondents: Members and staff from academia, community organizations, local/state/federal government, private sector, and tribal government and services organizations including those who serve American Indian and Alaska Native and/or racial and ethnic minorities.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
OASH grant recipients	800	3	1	2,400
Total	800	3	1	2,400

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2024–15460 Filed 7–12–24; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Board of Scientific Counselors.

Date: November 7, 2024.

Open: 11:00 a.m. to 12:35 p.m.

Agenda: Program Discussion and Investigator Report.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Closed: 12:35 p.m. to 2:30 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Contact Person: David Landsman, Ph.D., Branch Chief, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD 20894, 301–435–5981, *landsman@mail.nih.gov.*

Any member of the public may submit written comments no later than 15 days in advance of the meeting. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Open sessions will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*) on November 7, 2024. Please direct any questions to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 9, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15384 Filed 7–12–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 10–11, 2024.

Open: September 10, 2024, 9:00 a.m. to 3:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38A, 1st Floor, Visitors Center, 8600 Rockville Pike, Bethesda, MD 20892 (In-Person Meeting).

Closed: September 10, 2024, 3:45 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, 1st Floor, Visitors Center, 8600 Rockville Pike, Bethesda, MD 20892 (In-Person Meeting).

Open: September 11, 2024, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38A, 1st Floor, Visitors Center, 8600 Rockville Pike, Bethesda, MD 20892 (In-Person Meeting).

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has stringent procedures for entrance into NIH federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on September 10–11, 2024.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: July 9, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15388 Filed 7–12–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2448]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before October 15, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2448, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Wells County, Indiana and Incorporated Areas Project: 15–05–1087S Preliminary Date: September 30, 2021	
City of Bluffton	Wells County Area Plan Commission, 223 West Washington Street, Rm. 211, Bluffton, IN 46714.
Town of Markle	Huntington County Department of Community Development, 201 N Jefferson Street, Room 204, Huntington, IN 46750.
Town of Ossian	Wells County Area Plan Commission, 223 West Washington Street, Rm. 211, Bluffton, IN 46714.
Town of Vera Cruz	Wells County Area Plan Commission, 223 West Washington Street, Rm. 211, Bluffton, IN 46714.

Community	Community map repository address
Town of Zanesville	Wells County Area Plan Commission, 223 West Washington Street, Rm. 211, Bluffton, IN 46714.
Unincorporated Areas of Wells County	Wells County Area Plan Commission, 223 West Washington Street, Rm. 211, Bluffton, IN 46714.
Langlade County, Wisconsin and Incorporated Areas Project: 20–05–0005S Preliminary Date: April 30, 2024	
City of Antigo	City Hall, 700 Edison Street, Antigo, WI 54409.
Unincorporated Areas of Langlade County	Langlade County Resource Center, 837 Clermont Street, Antigo, WI 54409.
Village of White Lake	Village Hall, 615 School Street, White Lake, WI 54491.
Washington County, Wisconsin and Incorporated Areas Project: 21–05–0013S Preliminary Date: March 20, 2024	
City of West Bend	City Hall, 1115 South Main Street, West Bend, WI 53095.
Unincorporated Areas of Washington County	Washington County Public Agency Center, 333 East Washington Street, Suite 2300, West Bend, WI 53095.
Village of Germantown	Village Hall, N112 W17001 Mequon Road, Germantown, WI 53022.
Village of Kewaskum	Village Hall, 204 First Street, Kewaskum, WI 53040.
Village of Newburg	Village Hall, 620 West Main Street, Newburg, WI 53060.
Village of Richfield	Richfield Village Hall, 4128 Hubertus Road, Hubertus, WI 53033.

[FR Doc. 2024–15386 Filed 7–12–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2444]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before October 15, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2444, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information

regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Anderson County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
City of Lawrenceburg	City Hall, 100 North Main Street, Lawrenceburg, KY 40342.
Unincorporated Areas of Anderson County	Lawrenceburg City Hall, 100 North Main Street, Lawrenceburg, KY 40342.
Boyle County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
Unincorporated Areas of Boyle County	Boyle County Government Services Center, 1858 South Danville By-pass, Danville, KY 40422.
Bullitt County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
City of Fox Chase	Bullitt County Nina Mooney Annex Building, 149 North Walnut Street, 3rd Floor, Shepherdsville, KY 40165.
City of Hebron Estates	Hebron Estates Community Center, 3407 Burkland Boulevard, Shepherdsville, KY 40165.
City of Hillview	Hillview City Office, 283 Crestwood Lane, Louisville, KY 40229.
City of Mount Washington	City Hall, 311 Snapp Street, Mount Washington, KY 40047.
City of Pioneer Village	Pioneer Village City Hall, 4700 Summitt Drive, Louisville, KY 40229.
City of Shepherdsville	Government Center, 634 Conestoga Parkway, Shepherdsville, KY 40165.
Unincorporated Areas of Bullitt County	Bullitt County Nina Mooney Annex Building, 149 North Walnut Street, 3rd Floor, Shepherdsville, KY 40165.
Hardin County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
City of Radcliff	City Hall, 411 West Lincoln Trail Boulevard, Radcliff, KY 40160.
City of West Point	City Hall, 509 Elm Street, West Point, KY 40177.
Unincorporated Areas of Hardin County	Hardin County Government Center, 150 North Provident Way, Suite 223, Elizabethtown, KY 42701.
Henry County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
Unincorporated Areas of Henry County	Henry County Planning and Zoning Department, 19 South Property Road, New Castle, KY 40050.
Mercer County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
City of Harrodsburg	The Greater Harrodsburg/Mercer County Planning and Zoning Commission, 109 Short Street, Number 1, Harrodsburg, KY 40330.
Unincorporated Areas of Mercer County	The Greater Harrodsburg/Mercer County Planning and Zoning Commission, 109 Short Street, Number 1, Harrodsburg, KY 40330.
Nelson County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
City of Bardstown	Nelson County Joint City-County Planning Commission, 129 Parkway Drive, Bardstown, KY 40004.
City of Bloomfield	Nelson County Joint City-County Planning Commission, 129 Parkway Drive, Bardstown, KY 40004.
Unincorporated Areas of Nelson County	Nelson County Joint City-County Planning Commission, 129 Parkway Drive, Bardstown, KY 40004.

Community	Community map repository address
Oldham County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
City of Crestwood	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
City of La Grange	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
Unincorporated Areas of Oldham County	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
Shelby County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
City of Shelbyville	Public Works Department, 787 Kentucky Street, Shelbyville, KY 40065.
City of Simpsonville	City Hall, 108 Old Veechdale Road, Simpsonville, KY 40067.
Unincorporated Areas of Shelby County	Shelby County Courthouse, 501 Main Street, Shelbyville, KY 40065.
Spencer County, Kentucky and Incorporated Areas Project: 22–04–0013S Preliminary Date: March 27, 2024	
City of Taylorsville	Spencer County Planning and Zoning, 220 Main Cross, Taylorsville, KY 40071.
Unincorporated Areas of Spencer County	Spencer County Planning and Zoning, 220 Main Cross, Taylorsville, KY 40071.
Bollinger County, Missouri and Incorporated Areas Project: 19–07–0065S Preliminary Date: August 16, 2023	
City of Marble Hill	City Hall, 305 1st Street, Marble Hill, MO 63764.
Unincorporated Areas of Bollinger County	Bollinger County Courthouse, 204 High Street, Suite #5, Marble Hill, MO 63764.
Village of Glen Allen	Municipal Hall, 19129 Short Street, Glen Allen, MO 63751.
Village of Sedgewickville	Bollinger County Courthouse, 204 High Street, Suite #5, Marble Hill, MO 63764.
Nuckolls County, Nebraska and Incorporated Areas Project: 23–07–0003S Preliminary Date: January 31, 2024	
City of Nelson	City Office, 580 South Main Street, Nelson, NE 68961.
Unincorporated Areas of Nuckolls County	Nuckolls County Courthouse, 150 South Main Street, Nelson, NE 68691.
Village of Oak	Village of Oak Clerk's Office, 24 South Nevada Street, Nelson, NE 68961.

[FR Doc. 2024–15385 Filed 7–12–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2024–0025]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, Department of Homeland Security (DHS).

ACTION: Committee management; notice of committee charter renewal.

SUMMARY: The Secretary of Homeland Security has determined that the renewal of the Data Privacy and Integrity Advisory Committee is necessary and in the public interest in connection with the Department of Homeland Security's performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration. This notice is not a solicitation for membership.

DATES: The committee's current Charter is effective August 9, 2022, and expires August 9, 2024.

FOR FURTHER INFORMATION CONTACT: Sandra L. Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Privacy Office, Mail Stop 0655, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20598–0655, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *privacycommittee@hq.dhs.gov.*

Responsible DHS Officials: Mason C. Clutter, Chief Privacy Officer, and Sandra L. Taylor, Designated Federal Officer, 2707 Martin Luther King, Jr., Avenue SE, Mail Stop 0655, Washington, DC 20598, *PrivacyCommittee@dhs.gov,* (202) 343–1717.

SUPPLEMENTARY INFORMATION: *Purpose and Objective:* Under the authority of 6 U.S.C. 451, this Charter renewed the Data Privacy and Integrity Advisory Committee as a discretionary committee, which shall operate in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. ch. 10. The Committee provides advice at the request of the Secretary and the Chief Privacy Officer of the Department of Homeland Security on programmatic, policy, operational, security, administrative, and technological issues within DHS that relate to personally identifiable information (PII), data integrity, transparency, and other privacy-related matters.

Mason C. Clutter,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2024–15459 Filed 7–12–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2024–N034; FXES11130300000–245–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before August 14, 2024.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* ESXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email (preferred method): permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. ESXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) 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: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ESPER2885463	Kyle Jansky, Columbia, MO.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and northern long-eared bat (*M. septentrionalis*).	AL, AR, CT, DE, DC, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio-tag, release.	Amend.
ES33473D	Antoinette R. Sitting Up Perez, Ava, MO.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and northern long-eared bat (*M. septentrionalis*).	MO	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release.	Amend.
ESPER10935155 ..	Brittney Oliver, Glendale, AZ.	Tricolored bat (*Perimyotis subflavus*) and northern long-eared bat (*Myotis septentrionalis*).	LA, TX	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio-tag, release.	New.
ES94321A	Brian O'Neill, Oak Park, IL.	Add round hickorynut (*Obovaria subrotunda*) and longsolid (*Fusconaia subrotunda*) to existing 28 authorized freshwater mussel species and 6 freshwater fish species.	Add new States—AL, MS—to existing authorized States: IL, IN, IA, KY, MI, MN, MO, OH, PA, TN, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, relocate.	Amend.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES130900	Enviroscience, Inc., Stow, OH.	Add new species—round hickorynut (*Obovaria subrotunda*) and longsolid (*Fusconaia subrotunda*)—to 42 existing authorized freshwater mussel species and 8 freshwater fish species.	AL, FL, GA, IL, IN, IA, KY, MI, MN, MO, NC, OH, TN, TX, VA, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, relocate.	Amend.
ES02373A	Environmental Solutions and Innovations, Inc., Cincinnati, OH.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), and Virginia big-eared bat (*C. t. virginianus*), 16 freshwater mussel species, 6 freshwater fish species, 6 terrestrial insect species, and Northeastern bulrush (*Scirpus ancistrochaetus*).	Add new States—CO, NM, TX, FL—to existing authorized States: AL, AR, CT, DE, DC, GA, IL, IN, IA, KY, KS, LA, ME, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio tag, band, enter hibernacula, release, electrofish, bio-sample.	Amend.
ES02365A	Lynn Robbins, Springfield, MO.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*).	Add new States—CO, NM, TX—to existing authorized States: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, KS, LA, ME, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio-tag, band.	Amend.
ES06873B	Andrew Carson, Cincinnati, OH.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*).	Add new States—CO, ME, NM, TX—to existing authorized States: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, KS, LA, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NC, ND, NY, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, identify, radio-tag, band, collect nonintrusive measurements, and release.	Amend.
ES182436	Illinois Natural History Survey, Champaign, IL.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and northern long-eared bat (*M. septentrionalis*).	Add new States—IA, IN, KY, WI—to existing authorized States: IL, MO.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, handle, identify, radio-tag, band, collect non-intrusive measurements, conduct wing biopsies, enter hibernacula or maternity roost caves, and release.	Amend.
ES63118D	Clarissa Starbuck, Rio Rancho, NM.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and northern long-eared bat (*M. septentrionalis*).	Add new States—CO, NM, TX—to existing authorized States: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, KS, LA, ME, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio-tag, band, bio-sample, release.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Service, Midwest Region.

[FR Doc. 2024–15440 Filed 7–12–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14400000 PN0000 HQ350000 212; OMB Control Number 1004–0012]

Agency Information Collection Activities; Application for Land for Recreation or Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 13, 2024.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0012 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Grace M. Wagstaff by email at *gwagstaff@blm.gov,* or by telephone at (279) 202–4627. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) 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. The ICR may also be viewed at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. The BLM may not conduct or sponsor a collection of information and a response to a request for information is not required unless it displays a current valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

The BLM is especially interested in public comment addressing the following:

(1) whether collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility;

(2) determination of the accuracy of the BLM's estimate of the burden for collection of information, including validity of methodology and assumptions used;

(3) methods to enhance the quality, utility, and clarity of information to be collected; and

(4) how the agency can minimize the burden of information collection on those who respond, including use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments submitted in response to this notice are a matter of public record. The BLM will include or summarize each comment in its request to OMB to approve this ICR. 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.

Abstract: The BLM uses this information collection to decide whether or not to lease or sell certain public lands to applicants under the Recreation and Public Purposes Act, 43 U.S.C. 869 to 869–4. The BLM plans to request that OMB renew this OMB Control Number for an additional three (3) years.

Title of Collection: Application for Land for Recreation or Public Purposes (43 CFR 2740 and 2912).

OMB Control Number: 1004–0012.

Form Number: 2740–01.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, Territory, county, and local governments; nonprofit corporations; and nonprofit associations.

Total Estimated Number of Annual Respondents: 23.

Total Estimated Number of Annual Responses: 23.

Estimated Completion Time per Response: 40 hours.

Total Estimated Number of Annual Burden Hours: 920.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $2,300.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2024–15455 Filed 7–12–24; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1366]

Certain Semiconductor Devices, and Methods of Manufacturing Same and Products Containing the Same; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on July 5, 2024, the presiding chief administrative law judge (''CALJ'')

issued an Initial Determination on Violation of Section 337. The CALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (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 *https://www.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: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain semiconductor devices, and methods of manufacturing same and products containing the same imported, sold for importation, and/or sold after importation by respondents Innoscience (Zhuhai) Technology Company, Ltd. and Innoscience America, Inc.; and cease and desist orders directed to the respondents. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on July 5, 2024. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, 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 recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended 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 recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on August 9, 2024.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1366'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 9, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–15414 Filed 7–12–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–24–031]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 19, 2024 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–728 and 731–TA–1697 (Preliminary) (Vanillin from China). The Commission currently is scheduled to complete and file its determinations on July 22, 2024; views of the Commission currently are scheduled to be completed and filed on July 29, 2024.
5. Commission vote on Inv. No. 731–TA–1696 (Preliminary) (Large Top-Mount Combination Refrigerator-Freezers from Thailand). The Commission currently is scheduled to complete and file its determination on July 22, 2024; views of the Commission currently are scheduled to be completed and filed on July 29, 2024.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 11, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–15576 Filed 7–11–24; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; ETA Financial Report Form ETA–9130

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension, with no changes, of the authority to conduct the information collection request (ICR) titled, ''ETA Financial Report Form ETA–9130.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by September 13, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Latonya Torrence by telephone at 202–693–3708 (this is not a toll-free number). For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Grants Management, N–4716, 200 Constitution Avenue NW, Washington, DC 20210; by email: *Torrence.Latonya@dol.gov;* or by fax 202–693–2705.

FOR FURTHER INFORMATION CONTACT: Latonya Torrence by telephone at 202–693–3708 (this is not a toll-free number) or by email at *Torrence.Latonya@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This proposed information collection request seeks the extension of ETA Financial Report Form ETA–9130, which is currently being used by all recipients of ETA federal assistance to report financial information to ETA. ETA utilizes the data collected to assess the effectiveness of ETA programs and to monitor and analyze the financial activity of its recipients. Recipients utilize a Federal shared-service provider to electronically report data that reflects the requirements of the ETA–9130. This also allows several sections of the ETA–9130 to be pre-filled and automatically calculated, thus reducing overall completion time. Workforce Innovation and Opportunity Act section 185(e), 20 CFR 667.300, and the Uniform Guidance (2 CFR part 200) authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Approval No. 1205–0461.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through 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).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: ETA Financial Report Form ETA–9130.

Form: ETA–9130.

OMB Control Number: 1205–0461.

Affected Public: State workforce agencies, local governments, non-profit organizations, educational institutions, consortia of any and/or all of the above.

Estimated Number of Respondents: 5,400.

Frequency: Quarterly.

Total Estimated Annual Responses: 21,600.

Estimated Average Time per Response: .75 hour.

Estimated Total Annual Burden Hours: 16,200 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–15374 Filed 7–12–24; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; ETA 9161—Self Employment Assistance (SEA)

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''ETA 9161 Self Employment Assistance (SEA).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by September 13, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Andre Chisolm by telephone at 202–693–3198 (this is not a toll-free number), or by email at *Chisolm.Andre.C@dol.gov*. For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4520, 200 Constitution Avenue NW, Washington, DC 20210, by email: *Chisolm.Andre.C@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Eric Congious by telephone at 202–693–0763. (this is not a toll-free number) or by email at *Congious.Eric.L@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 (Pub. L. 105–306) permanently authorized the SEA program, which is a reemployment program that helps qualifying Unemployment Insurance (UI) claimants start their own businesses. Public Law 112–96, the Middle-Class Tax Relief and Job Creation Act of 2012 (the 2012 Act), expanded the SEA program to provide states the opportunity to allow UI claimants receiving Extended Benefits to participate in the SEA program. Currently, four states operate this reemployment program.

Section 2183(b)(1) of the 2012 Act directs the Secretary of Labor to establish reporting requirements for States that have established SEA programs, which shall include reporting on:

(A) The total number of individuals who received unemployment compensation and (i) were referred to the SEA program; (ii) participated in such program; and (iii) received an allowance under such program;

(B) the total amount of allowances provided to individuals participating in the SEA program;

(C) the total income (as determined by survey or other appropriate method) for businesses that have been established by individuals participating in the SEA program, as well as the total number of individuals employed through such businesses; and

(D) any additional information, as determined appropriate by the Secretary. ETA currently uses Form ETA 9161 as an electronic reporting mechanism to collect this required information. In addition to Public Law 112–96, collection of data is used for oversight of the program as authorized under Section 303(a)(6) of the Social Security Act.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0490.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through 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).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Self Employment Assistance.

Form: ETA 9161.

OMB Control Number: 1205–0490.

Affected Public: State Workforce Agencies and former SEA participant.

Estimated Number of Respondents: 2,204.

Frequency: Quarterly.

Total Estimated Annual Responses: 17,616.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 8,832 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–15373 Filed 7–12–24; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) Committee on Science and Engineering Policy (SEP) hereby gives notice of the scheduling of a videoconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Friday, July 19, 2024, from 3:00 p.m.–4:00 p.m. Eastern.

PLACE: The meeting will be held by videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Members of the public can observe this meeting through a YouTube livestream. The YouTube link will be available from the NSB meetings web page—*https://www.nsf.gov/nsb/meetings/index.jsp.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; Discussion and vote on Detailed Narrative Outline for *Indicators 2026* thematic report: *Discovery.*

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is Chris Blair, *cblair@nsf.gov,* 703/292–7000.

Ann E. Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2024–15571 Filed 7–11–24; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of July 15, 22, 29, and August 5, 12, 19, 2024. 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 notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@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 July 15, 2024

There are no meetings scheduled for the week of July 15, 2024.

Week of July 22, 2024—Tentative

There are no meetings scheduled for the week of July 22, 2024.

Week of July 29, 2024—Tentative

There are no meetings scheduled for the week of July 29, 2024.

Week of August 5, 2024—Tentative

There are no meetings scheduled for the week of August 5, 2024.

Week of August 12, 2024—Tentative

There are no meetings scheduled for the week of August 12, 2024

Week of August 19, 2024—Tentative

There are no meetings scheduled for the week of August 19, 2024

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Sarah Turner at 301–287–9058 or via email at *Sarah.Turner@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 10, 2024.

For the Nuclear Regulatory Commission.

Sarah A. Turner,

Information Management Specialist, Office of the Secretary.

[FR Doc. 2024–15509 Filed 7–11–24; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2024–413; Order No. 7259]

International Money Transfer Service

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service document with the Commission concerning the removal of International Money Transfer Service-Outbound and International Money Transfer Service-Inbound from the *Mail Classification Schedule.* This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 5, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://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:

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I. Introduction

On July 5, 2024, pursuant to 39 U.S.C. 3642 and 39 CFR 3040.130 *et seq.,* the Postal Service filed a request to remove *Mail Classification Schedule* (MCS) section 2620 International Money Transfer Service (IMTS)—Outbound, effective October 1, 2024, and to remove MCS section 2625 IMTS—Inbound, effective October 1, 2025, from the Competitive product list in the MCS.[1]

[1] Request of the United States Postal Service to Remove International Money Transfer Service—

Continued

II. Contents of Filing

The Postal Service states that the removal of MCS section 2620 IMTS—Outbound, effective October 1, 2024 (Phase II), and the removal of MCS section 2625 IMTS—Inbound, effective October 1, 2025 (Phase III), from the Competitive product list in the MCS are authorized by Governors' Decision No. 24–2. *Id.* at 1–2. Governors' Decision No. 24–2 also authorizes the removal of prices for Sure Money (DineroSeguro) for the IMTS—Outbound product from the MCS, effective July 14, 2024 (Phase I), which the Commission approved previously in Order No. 7175.[2] The Postal Service includes Governors' Decision No. 24–2 and proposed changes to the MCS in legislative format in Attachment 1. Request at 2.

The Postal Service states that the Request satisfies the requirements in 39 CFR 3040.131(a) through (f) because: (a) it includes the name and class of the products that are the subject of the request; (b) it includes a copy of the Governors' Decision supporting the request in Attachment 1; (c) it indicates that the products to be removed are from the Competitive product list; (d) it indicates that the two products to be removed are not one of the three identified categories subject to unique regulatory treatment; (e) it includes a Statement of Supporting Justification in Attachment 2, which explains why the requested changes to the MCS are not inconsistent with the applicable statutory and regulatory requirements; and (f) it includes a copy of the applicable sections of the MCS and the proposed changes in legislative format in Attachment 1. *Id.* at 2–3; Attachments 1 and 2.

In its Statement of Supporting Justification, the Postal Service states that the removal of the IMTS—Outbound product and the IMTS—Inbound product from the MCS will not result in the violations of the requirements in 39 U.S.C. 3633(a) for the following reasons. *Id.,* Attachment 2 at 3–4. First, the removal of the two products is consistent with 39 U.S.C. 3633(a)(2), because the IMTS—Outbound product was already non-compliant in FY 2023 and the IMTS—Inbound product was non-compliant in prior years. *Id.* Their removal will eliminate the negative contribution of the two products and comply with 39 U.S.C. 3633(a)(2). *Id.* Second, consistent with 39 U.S.C. 3633(a)(3), their removal will not impact Competitive products' ability to collectively cover an appropriate share of the Postal Service's institutional costs, because the IMTS—Outbound product and the IMTS—Inbound product each generates a very small amount of revenue. *Id.* Third, consistent with 39 U.S.C. 3633(a)(1), it is unlikely that the removal of the two products that generate a very small amount of revenue would lead to the subsidization of Competitive products by Market Dominant products. *Id.*

In addition, the Postal Service states that its share of the market for services that are similar to international postal money orders is very small and there have been significant declines in the volume of the IMTS—Outbound and IMTS—Inbound products in recent years. *Id.* at 5–6. The Postal Service thus concludes that the impact of the removal of the two products on competitors is likely to be minimal. *Id.* at 6. Furthermore, the Postal Service states that while it has no specific views from customers about the removal of the two products, its customers have not expressed much interest in the products or availed themselves of the products for some time, which suggests that market interest among customers for these two products is ''low to non-existent.'' *Id.* Finally, the Postal Service states that there appears to be a number of entities that provide electronic money transfer services that are somewhat similar to international postal money orders, and the Postal Service's share of the market for such similar services is very small. *Id.* The Postal Service therefore concludes that the impact of the removal of the two products on small business concerns is ''likely to be minimal.'' *Id.* at 6–7.

III. Commission Action

The Commission establishes Docket No. MC2024–413 for consideration of matters raised by the Request.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3633 and 3642 and 39 CFR 3040.130, 3040.131, and 3040.132. Comments are due no later than August 5, 2024. The public portions of the filings can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Samuel Robinson to represent the interests of the general public (Public Representative) in this docket, pursuant to 39 U.S.C. 505.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2024–413 for consideration of matters raised by the Postal Service's Request.

2. Pursuant to 39 U.S.C. 505, Samuel Robinson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than August 5, 2024.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2024–15443 Filed 7–12–24; 8:45 am]

BILLING CODE 7710–FW–P

Outbound and International Money Transfer Service—Inbound from the Competitive Product List, July 5, 2024, at 1 (Request).

[2] *Id.* at 2 (citing Docket No. CP2024–230, Order Approving Changes in Classifications of General Applicability for Competitive Products, June 6, 2024, at 16 (Order No. 7175)).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–415 and CP2024–422; MC2024–416 and CP2024–423]

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:* July 16, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://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

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the

modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each 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 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

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]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), 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 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–415 and CP2024–422; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 150 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* July 16, 2024.

2. *Docket No(s).:* MC2024–416 and CP2024–423; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 151 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* July 16, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–15431 Filed 7–12–24; 8:45 am]

BILLING CODE 7710–FW–P

[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).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–417 and CP2024–424]

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:* July 17, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://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

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each 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 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

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]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), 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 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–417 and CP2024–424; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 40 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* July 17, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–15454 Filed 7–12–24; 8:45 am]

BILLING CODE 7710–FW–P

[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).

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International & Priority Mail International Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International & Priority Mail International contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: Date of notice: July 15, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International & Priority Mail International Contract 10 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–405 and CP2024–413.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2024–15432 Filed 7–12–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100480; File No. SR–NYSE–2024–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Section 102.06 of the NYSE Listed Company Manual To Provide That a Special Purpose Acquisition Company Can Remain Listed Until Forty-Two Months From Its Original Listing Date if It Has Entered Into a Definitive Agreement With Respect to a Business Combination Within Three Years of Listing

July 9, 2024.

On March 27, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] a proposal to amend Section 102.06 of the NYSE Listed Company Manual (''Manual'') to provide that a special purpose acquisition company (''SPAC'') can remain listed until forty-two months from its original listing date if it has entered into a definitive agreement with respect to a business combination within three years of listing. The proposed rule change was published for comment in the **Federal Register** on April 10, 2024.[4] On May 22, 2024, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission has not received any comments on the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act [7] to determine whether to approve or disapprove the proposed rule change.

I. Description of Proposed Rule Change

SPACs are special purpose acquisition companies whose business plan is to raise capital in an initial public offering (''IPO'') and within a specified period of time, engage in a merger or acquisition with one or more unidentified operating companies.[8] Section 102.06 of the Manual sets forth the listing requirements applicable to SPACs. Section 102.06 requires, among other things, that a SPAC must keep 90% of the gross proceeds of its IPO in a trust account until the completion of a Business Combination [9] meeting the rule's requirements. The SPAC also must complete one or more Business Combinations, having an aggregate fair market value of at least 80% of the value of the trust account, within a period of time not to exceed 3 years of the listing of the SPAC.[10] Section 102.06e of the Manual provides that the Exchange will promptly commence delisting procedures with respect to any listed SPAC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract or (ii) three years, whichever is shorter.

The Exchange proposes to amend Section 102.06e to extend the period for which a SPAC can remain listed if it has signed a definitive agreement with respect to a Business Combination. As proposed, Section 102.06e would provide that a SPAC will be liquidated, and the Exchange will promptly commence delisting procedures, if the SPAC has not: (i) entered into a definitive agreement with respect to its Business Combination within (A) the time period specified by its constitutive documents or by contract or (B) three years, whichever is shorter; or (ii) consummated its Business Combination within the time period specified by its constitutive documents or by contract or forty-two months, whichever is shorter.[11]

In support of the proposed rule change, the Exchange states that it believes that a SPAC represents a significantly different investment after it enters into a definitive agreement for a Business Combination, as investors who continue to hold the SPAC's securities or acquire them after that agreement is executed have knowledge about the operating asset the SPAC intends to own and can be assumed to own the securities because they want to have an ownership interest in the post-Business Combination entity.[12] As such, the Exchange believes that a SPAC that has signed a definitive merger agreement to acquire an identified business does not present the same investor protection concerns as a SPAC before signing such an agreement, which it describes as more purely a blind pool investment.[13] In addition, the Exchange states that delisting a SPAC that has signed a definitive merger agreement when it reaches the three-year deadline may be contrary to the interests of the SPAC's public shareholders at that time.[14]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 99906 (Apr. 4, 2024), 89 FR 25291 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 100220 (May 22, 2024), 89 FR 46527 (May 29, 2024). The Commission designated July 9, 2024, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See, e.g.,* Securities Act Release No. 11265 (Jan. 24, 2024), 89 FR 14158, 14160 (Feb. 26, 2024).

[9] For purposes of Section 102.06, a ''Business Combination'' is defined as a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets.

[10] *See* Section 102.06 of the Manual.

[11] *See* Notice, 89 FR at 25292.

[12] *Id.*

[13] *Id.*

[14] *Id.* The Exchange also states that Nasdaq's SPAC listing requirements include a three-year limitation that is substantially similar to that included in the Exchange's existing SPAC listing standard. *See* Nasdaq IM 5101–2. However, the

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2024–18 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [15] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[16] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) [17] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[18]

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[19]

The Exchange has proposed a fundamental change to the well-established requirement that a SPAC's Business Combination must be consummated within three years or face delisting, and is seeking to extend this time requirement to allow up to 42 months for a SPAC to complete its Business Combination if the SPAC has entered into a ''definitive agreement'' to consummate its Business Combination.[20] In support of the proposed change, the Exchange states that once a definitive agreement is entered into, a SPAC ''represents a significantly different investment'' because more information will be available to investors about the operating asset the SPAC intends to own.[21]

The three-year limit, however, was put in place to provide protection for public shareholders by restricting the time period a SPAC could retain shareholder funds without consummating a Business Combination.[22] The Exchange does not address how the proposal would affect shareholder protection or why it is appropriate for a SPAC to retain shareholder funds past the current maximum time period of three years [23] and how that would be consistent with the investor protection and public interest requirements of Section 6(b)(5) of the Act.[24]

Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirements, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest and whether the Exchange has provided an adequate basis for the Commission to conclude that the proposal would be consistent with Section 6(b)(5) of the Act.

In addition, the proposal raises concerns under the Investment Company Act of 1940. The Commission recently noted that a SPAC whose assets and income are substantially composed of, and derived from, securities raises concerns that it may be an investment company when it operates beyond certain timelines, including the one-year and eighteen-month timelines established under Rule 3a–2 of the Investment Company Act of 1940 and Rule 419 of the Securities Act of 1933, respectively.[25] The Commission also noted that these concerns increase as the departure from these timelines lengthens.[26] If such a SPAC meets the definition of an investment company, it would have to register as an investment company and this would raise issues of its continued listing as a SPAC.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [27] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable

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Exchange states that Nasdaq appeal panels have granted additional time to SPACs that appeal their delisting for failure to consummate a Business Combination within three years in circumstances where the SPAC has entered into a definitive agreement within such three-year period. *See* Notice, 89 FR at 25291–92. *See also,* infra note 20, concerning a recently submitted Nasdaq proposed rule change on SPACs.

[15] 15 U.S.C. 78s(b)(2)(B).

[16] *Id.*

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] For example, the Commission has repeatedly stated in approving exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. *See, e.g.,* Securities Exchange Act Release Nos. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (NYSE–2017–31); 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17); 58228 (July 25, 2008), 73 FR 44794, 44796 (July 31, 2008) (SR–NASDAQ–2008–013). In addition, the Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* Securities Exchange Act Release Nos. 90768 (Dec. 22, 2020), 85 FR 85807, 85811 n.55 (Dec. 29, 2020) (SR–NYSE–2019–67); 82627 (Feb. 2, 2018), 83 FR 5650, 5653 n.53 (Feb. 8, 2018) (SR–NYSE–2017–30); 87648 (Dec. 3, 2019), 84 FR 67308, 67314 n.42 (Dec. 9, 2019) (SR–NASDAQ–2019–059); 88716 (Apr. 21, 2020), 85 FR 23393, 23395 n.22 (Apr. 27, 2020) (SR–NASDAQ–2020–001).

[20] *See* Notice, 89 FR at 25292. On July 8, 2024, Nasdaq filed a proposed rule change that would, among other things, eliminate the discretion of Nasdaq appeals panels to grant such additional time to a SPAC. (SR–Nasdaq–2024–038).

[21] *See* Notice, 89 FR at 25292.

[22] *See* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008). At the time the NYSE listing standards for SPACs were initially approved, the Commission stated that those standards provided additional protections and safeguards to address investor protection including, among others, the requirement that a SPAC consummate a Business Combination within a specified period of time not to exceed three years or else investors would be entitled to liquidation rights, and the security would be delisted. *Id.* at 27600.

[23] SPAC sponsors have incentives to complete a business consummation or ''de-SPAC.'' The SPAC sponsor receives compensation in the form of discounted SPAC shares that generally only have value if a business consummation occurs. *See* Special Purpose Acquisition Companies, Shell Companies, and Projections, Securities Act Release No. 11265 (Jan. 24, 2024), 89 FR 14158, 14160 (Feb. 26, 2024) (''SPAC Adopting Release''). Thus, ''[t]he SPAC sponsor's compensation structure creates incentives to complete a de-SPAC transaction. These incentives may induce a SPAC sponsor and others to compel the SPAC to complete the de-SPAC transaction on unfavorable terms to avoid liquidation of the SPAC at the expiry of this period.'' *Id.* at 14176.

[24] 15 U.S.C. 78f(b)(5).

[25] *See generally,* SPAC Adopting Release, 89 FR at 14260 (describing a SPAC's duration as one relevant consideration in evaluating whether a SPAC is an investment company); Section 3(a)(1) of the Investment Company Act of 1940 (defining an investment company).

[26] *Id.*

[27] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[28] and any failure of an SRO to provide this information may result in the Commission not having sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rule and regulations.[29]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [30] to determine whether the proposal should be approved or disapproved.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[31] any request for an opportunity to make an oral presentation.[32]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 5, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 19, 2024. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[33] in addition to any other comments they may wish to submit about the proposed rule change.

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–2024–18 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–2024–18. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–2024–18 and should be submitted by August 5, 2024. Rebuttal comments should be submitted by August 19, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15411 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

[28] *See id.*

[29] *See id.*

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 240.19b–4.

[32] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[33] *See* Notice, *supra* note 3.

[34] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100474; File No. SR–PEARL–2024–27]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Relating to the Continuing Education for Registered Persons as Provided Under Exchange Rule 3103

July 9, 2024.

Pursuant to the provisions of 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 June 28, 2024, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Interpretation and Policy .01 to Exchange Rule 3103, Continuing Education, to reopen the period by which eligible Members [3] who participate in the Maintaining Qualifications Program (''MQP'') will be able to complete their prescribed 2022 and 2023 continuing education content.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' *See* Exchange Rule 100.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 amend Interpretation and Policy .01 to Exchange Rule 3103, Continuing Education, to provide eligible Members another opportunity to elect to reopen the period by which certain participants in the MQP will be able to complete their prescribed 2022 and 2023 continuing education content.

In 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') implemented rule changes, which amended its Continuing Education (''CE'') Program requirements to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual CE through a new program, the MQP.[4] Under FINRA Rule 1240.01, the MQP designated a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to March 15, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (''FSAWP'')[5] under FINRA Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) immediately prior to March 15, 2022 (collectively, ''Look-Back Individuals'').

In 2023, FINRA amended FINRA Rule 1240.01, to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the ''FINRA Second Enrollment Period'').[6] The proposed rule change required that Look-Back Individuals who elect to participate in the MQP during the FINRA Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024. Look-Back Individuals who are enrolled in the MQP, similar to other MQP participants, are able to complete any prescribed CE and renew their annual MQP participation through their FINRA Financial Professional Gateway (''FinPro'') accounts.

In response to FINRA's rule changes and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges, the Exchange implemented rule changes to align with FINRA's CE Program.[7] Such rules, among other things, provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing CE through the MQP. Further, Exchange Rule 3103, Interpretation and Policy .01, includes a look-back provision that, subject to specified conditions, extends the option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately preceding July 1, 2022, and (ii) individuals who have been participants of the FSAWP immediately preceding July 1, 2022 implementation (*i.e.,* Look-Back Individuals).

Exchange Rule 3103 also provided Look-Back Individuals with a second enrollment period, between September 18, 2023, and December 31, 2023 (the ''Exchange Second Enrollment Period''). Exchange Rule 3103, Interpretation and Policy .01, requires that Look-Back Individuals who elect to participate in the MQP during the Exchange Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.[8]

FINRA recently submitted a proposal related to its CE Program (the ''FINRA Rule Change'').[9] The proposal set forth changes to FINRA Rule 1240.01, to provide Look-Back Individuals enrolled in the MQP in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 CE content as of March 31, 2024, the opportunity to complete such content between May 22, 2024, and July 1, 2024, to be eligible to continue their participation in the MQP.[10] In addition, the proposed rule change provides that any such individuals who will have completed their prescribed 2022 and 2023 CE content between March 31, 2024, and May 22, 2024, will be deemed to have completed such content by July 1, 2024, for purposes of the rule.

In the FINRA Rule Change, FINRA noted that it sent multiple reminders, including a March 16, 2024 email, to Look-Back Individuals who had enrolled in the MQP but had not completed their prescribed CE to remind them of the March 31, 2024 deadline. In the FINRA Rule Change, FINRA further noted that in the week leading up to the deadline, FINRA noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.[11] Per the FINRA Rule Change,

[4] *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). Other exchanges, including the Exchange, subsequently filed copycat rule filings to align their continuing education rules with those of FINRA. *See* Securities Exchange Act Release No. 95190 (June 30, 2022), 87 FR 40560 (July 7, 2022) (SR–PEARL–2022–25) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 3100, Registration Requirements, Exchange Rule 3103, Continuing Education Requirements, and Exchange Rule 3104, Electronic Filing Requirements for Uniform Forms).

[5] The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. The Exchange stopped accepting new participants for the FSAWP beginning on July 1, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

[6] *See* Securities Exchange Act Release No. 97184 (Mar. 22, 2023), 88 FR 18359 (Mar. 28, 2023) (SR–FINRA–2023–005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity to Elect to Participate in the Maintaining Qualifications Program).

[7] *See* Exchange Rules 3100, 3103, and 3104.

[8] The Exchange determined to treat the individuals who enrolled during the first period (preceding July 1, 2022) the same as those who enrolled during the second period (between September 18, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content. This is because those who had enrolled in the MQP during the first period satisfied all of the eligibility criteria for enrollment during the second period and would have been able to complete their prescribed CE content by March 31, 2024, had they chosen to enroll during the second period instead of enrolling during the first period.

[9] *See* Securities Exchange Act Release No. 100067 (May 6, 2024), 89 FR 40520 (May 10, 2024) (SR–FINRA–2024–006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Reopen the Period by Which Certain Participants in the Maintaining Qualifications Program May Complete Their Prescribed Continuing Education Content).

[10] This would include any Look-Back Individuals who were still in the process of completing their prescribed CE content as of March 31, 2024.

[11] Look-Back Individuals who enrolled in the MQP have until December 31, 2024, to renew their participation in the MQP for 2024, provided that they complete their prescribed CE by the stated deadline.

FINRA believes that some of those individuals may have been confused by the layout of their FinPro accounts. Specifically, if they selected the 2024 renewal banner, which was prominently displayed on their FinPro accounts, and completed the renewal process, they would not have been automatically redirected to complete any prescribed CE. Therefore, individuals may have inadvertently assumed that completion of the renewal process alone would have satisfied all of the necessary requirements to continue their participation in the MQP.[12]

For similar reasons and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges, the Exchange is also proposing to amend its rules (*i.e.,* Exchange Rule 3103, Interpretation and Policy .01) to provide Look-Back Individuals enrolled in the MQP in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 CE content as of March 31, 2024, the opportunity to complete such content between the effective date of this filing, and July 1, 2024, to be eligible to continue their participation in the MQP.[13] In addition, the proposed rule change provides that any such individuals who will have completed their prescribed 2022 and 2023 CE content between March 31, 2024, and the effective date of this filing, will be deemed to have completed such content by July 1, 2024, for purposes of the rule.

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) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's rule proposal is intended to harmonize the Exchange's supervision rules, specifically with respect to the continuing education requirements with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange.

The Exchange believes that reopening the period by which Look-Back Individuals will be able to complete their prescribed 2022 and 2023 CE content is appropriate under the circumstances. As FINRA noted in the FINRA Rule Change, Look-Back Individuals who had enrolled in the MQP in 2022 and 2023 but had not completed their prescribed 2022 and 2023 CE content by the March 31, 2024 deadline may have been confused, as described above. The Exchange believes that participation in the MQP reduces unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. The Exchange believes that reopening the CE completion period, as proposed, will further these goals and objectives.

Further, the Exchange believes the proposed amendments reduce the possibility of a regulatory gap between Exchange and FINRA rules, providing more uniform standards across the securities industry. The Exchange believes that the proposed rule change will bring consistency and uniformity with FINRA's recently amended CE Program, which will, in turn, assist members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes make ministerial changes to the Exchange's CE rules to align them with the CE rules of FINRA, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

[12] According to FINRA, a number of these individuals contacted FINRA to confirm whether they were required to satisfy any additional requirements other than completing the 2024 renewal. To provide FINRA with additional time to assess the situation, FINRA temporarily changed the March 31, 2024, due date for CE completion in its systems. This may have compounded the confusion because any Look-Back Individual who may have logged into their FinPro account during this time would have seen an interim CE completion date and would have been able to complete their prescribed CE content based on that interim CE completion date.

[13] This would include any Look-Back Individuals who were still in the process of completing their prescribed CE content as of March 31, 2024.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 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.

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange has stated that a waiver of the operative delay would allow the Exchange to implement the proposed changes to its CE rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules. The Exchange has also stated that a waiver would provide more uniform standards across the securities industry and help to avoid confusion for Exchange members that are also FINRA members. The Exchange believes a waiver would also provide immediately clarity to impacted individuals, thus minimizing the potential for confusion regarding the time frames for satisfying continuing education content in order to maintain eligibility to participate in the continuing education program. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[21]

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 under Section 19(b)(2)(B) [22] 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.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78s(b)(2)(B).

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–PEARL–2024–27 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–PEARL–2024–27. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also 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–PEARL–2024–27 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15405 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100467; File No. SR–CboeBYX–2023–020]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Modify Rule 11.24 To Introduce an Enhanced RPI Order and Expand Its Retail Price Improvement Program To Include Securities Priced Below $1.00

July 9, 2024.

On December 27, 2023, Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Rule 11.24 to introduce an Enhanced RPI Order and expand its Retail Price Improvement program to include securities priced below $1.00. The proposed rule change was published for comment in the **Federal Register** on January 17, 2024.[3] On February 27, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 6, 2024, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On April 16, 2024, the Commission published notice of Amendment No. 1 and instituted proceedings under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99311 (Jan. 10, 2024), 89 FR 2993 (''Notice''). To date, the Commission has received no comments on the proposed rule change. Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebyx-2023-020/srcboebyx2023020.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 99610, 89 FR 15621 (Mar. 4, 2024). The Commission designated April 16, 2024 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange amended the proposed rule change to provide additional examples, justification and support for its proposal and made certain changes to the proposed rule text. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebyx-2023-020/srcboebyx2023020-442119-1127142.pdf.*

Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of the Notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on January 17, 2024.[10] The 180th day after publication of the Notice is July 15, 2024. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates September 13, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–CboeBYX–2023–020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15398 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 99965 (Apr. 16, 2024), 89 FR 29389 (Apr. 22, 2024).

[9] 15 U.S.C. 78s(b)(2).

[10] *See supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100482; File No. SR–PHLX–2024–28]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Launch Proximity-On-Demand, a Managed Colocation Solution

July 9, 2024.

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 June 28, 2024, Nasdaq PHLX LLC (''Phlx'' 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 launch Proximity-On-Demand, a managed colocation solution.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

The Exchange proposes to launch Proximity-On-Demand (''POD''), a managed colocation solution. POD will offer colocation customers a convenient variant of colocation where applications are deployed on managed infrastructure in the form of virtual or dedicated servers in the co-location space.

Current Co-Location Offering

The Exchange currently offers colocation services, which include a suite of data center space, power, telecommunication, and other ancillary products and services that allow customers to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange. The use of colocation services is entirely voluntary and colocation services are available to all market participants who desire them.

Colocation customers are not provided any separate or superior means of direct access to the Exchange quoting and trading facilities. Nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among colocation customers themselves within the data center (or any future expansions to the data center).[3]

In addition, all orders sent to the Exchange market enter the marketplace through the same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, the Exchange has created no special market technology or programming that is available only to co-located customers and the Exchange has organized its systems to minimize, to the greatest extent possible, any advantage for one customer versus another.

Proximity-On-Demand

POD will be an alternative to the traditional offering of space and power for the physical colocation of customers' equipment. The Exchange will continue to offer its traditional colocation services.

With POD, customers will not need to order cabinets and power to install a server or network hardware in the Exchange's data center to be able to set up their systems and access the market directly. Instead, POD will provide customers with a variant of colocation where applications are deployed on a shared computing infrastructure[4] co-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Although the proposal and launch of POD are not dependent on the expansion of the data center, the Exchange notes that is in the process of expanding its data center in Carteret, New Jersey. Client connections to the matching engine will be equal across the board, within and among the current data center and the expansion.

[4] Shared computing infrastructure means that the Exchange would provide the infrastructure,

located in the data center,[5] providing customers with a convenient avenue to do business on the Exchange. With the Exchange's traditional colocation offering, the Exchange provides space and power and customers provide the hardware. With POD, the Exchange will provide the hardware. This allows the Exchange's customers to connect more quickly and with lower cost.

Customers will be able to select a dedicated server or a virtual machine. A dedicated server is single-tenant environment, meaning that only one customer has access to the server hardware. A virtual machine is a computing environment where each customer has exclusive access to their virtualized server, including its operating system and applications. While customers will control their virtual machines independently, the physical hardware resources, such as the CPU, memory, and storage, are shared among multiple virtual machines on the same physical server. Hypervisor technology keeps the separate customer operating systems securely segmented from each other, allowing a single server to support multiple virtual machines. This allows quicker deployment times and provides customers with the flexibility to dynamically adjust the amount of compute resources needed without requiring hardware changes. The Exchange anticipates that customers will choose a dedicated server where better performance is required but may prefer a virtual server for short-lived requirements or less performance-sensitive workloads.

The servers (dedicated and virtual) for POD will be located in a cabinet in the colocation space at the data center. Each customer will have their own logical network that is fully isolated and not shared with other customers. Those customers selecting a dedicated server would also have the option to add an analytics service.[6] The analytics service will provide the ability to monitor network traffic to and from the POD infrastructure, allowing customers access to data about bandwidth usage, latency, and information related to Precision Time Protocol (PTP) timestamped messages.

Access to POD will be available via virtual private network (VPN) or Secure Shell (SSH), similar to how customers would access their fully owned co-located hardware. Customers will be able to choose from several existing options for physical connectivity, including 1G Ultra, 10G, 10G Ultra, and 40G. POD will provide access to the market through the same Extranet network as is used currently by existing colocation customers. To be clear, POD will not afford its users any special advantages relative to users of its traditional colocation services.

Exchanges offer colocation services to facilitate the trading activities of those market participants who believe that colocation enhances the efficiency of their trading. The Exchange believes that the launch of POD will benefit an underserved market segment, including a niche of smaller customers who do not currently co-locate in any form at the data center but wish to do so. These smaller trading firms that do not directly connect and interface with the Exchange may struggle with the complexity, upfront investment, ongoing expense, and knowledge gaps required to code, connect, host and manage their own infrastructure, and trade directly with the Exchange.

The Exchange notes that similar services are currently offered by, and customers may obtain such service from, managed service providers that operate at the Carteret data center. For example, Pico and Options-IT currently offer managed service colocation at the Carteret data center.[7] In addition to managed service providers currently offering POD-like services at the data center, additional providers offer similar services in other locations and will likely be in the Carteret data center in the future as well.[8] ICE offers a comparable service, ''Compute on Demand,'' [9] in select locations, including at NY4 (located in Secaucus, New Jersey).[10] Customers of ICE's Compute on Demand could (and presumably do) connect to national securities exchanges.

POD will provide customers with increased options for colocation. POD will be entirely optional and available to all market participants who desire to subscribe to POD. It is a business decision of each firm whether to subscribe to POD. Rather than choosing POD, customers may choose to (1) directly co-locate at the data center by ordering cabinet space and power, and placing their equipment at the data center; (2) co-locate through a third party; or (3) not co-locate at all.

Implementation

The Exchange intends to submit a fee filing in the future to establish fees for POD, including fees for a dedicated server, a dedicated server with analytics, and a virtual machine. Implementation of the proposal described herein to offer POD would coincide with the subsequent fee filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] 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 because POD would provide customers with increased optionality to access the Exchange. The Exchange operates in a highly competitive market in which exchanges offer colocation services to facilitate the trading activities of those customers who believe that colocation enhances the efficiency of their trading. POD is a voluntary variant of colocation where customers can directly access the market without needing to procure physical hardware independently, instead they can use a shared computing infrastructure co-located in the data center.

The Exchange believes that the launch of POD will benefit an underserved market segment, including smaller customers who do not currently co-locate in any form at the data center but wish to do so. These smaller trading firms that do not directly connect and interface with the Exchange may struggle with the complexity, upfront

including hardware, that can be used by multiple customers.

[5] POD will be housed within the same data center as the existing traditional colocation offering and Exchange systems, located in Carteret, New Jersey.

[6] The analytics service is not available for virtual machines because the compute resourcing for operating analytics is incompatible with virtual machines.

[7] *See https://www.pico.net/infrastructure/colocation-hosting/; https://www.options-it.com/products/trading-infrastructure/exchange-colos/.*

[8] *See, e.g., https://deploy.equinix.com/product/bare-metal/; https://tnsi.com/resource/fin/tns-dedicated-server-comprehensive-cloud-server-management-press-release/.*

[9] *See https://www.ice.com/fixed-income-data-services/access-and-delivery/connectivity-and-feeds/hosting-managed-services#demand.* Compute on Demand provides customers with a managed solution and is a delivery model in which computing resources are made available to customers on an on-demand basis. ICE offers Compute on Demand in collaboration with Beeks. The Exchange also intends to launch POD in partnership with Beeks. Beeks will provide the hardware that will allow the Exchange to offer POD. In addition, the Johannesburg Stock Exchange currently offers an advanced managed infrastructure as a service solution, similar to POD, in collaboration with Beeks. *See https://beeksgroup.com/news/johannesburg-stock-exchange-jse-choose-beeks-and-ipc-to-power-private-cloud-deployments-for-their-customers/.*

[10] Cboe affiliated exchanges utilize the Equinix NY4 data center in Secaucus, NJ.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

investment, ongoing expense, and knowledge gaps required to code, connect, host and manage their own infrastructure, and trade directly with the Exchange. As such, the Exchange believes that the proposal would further the objective of removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The proposal would benefit the public interest by providing customers more colocation options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. As noted above, POD will be entirely optional and available to all market participants who desire to subscribe to POD. Rather than choosing to co-locate via POD, customers may choose to (1) directly co-locate at the data center by ordering cabinet space and power, and placing their equipment at the data center; (2) co-locate through a third party; or (3) not co-locate at all. Services comparable to POD are currently offered by, and customers may obtain such service from, any managed service providers that operate at the Carteret data center.

Again, POD will offer its users no special advantages relative to users of the Exchange's traditional colocation services. Though POD will allow customers to use Exchange-provided hardware to access the Exchange, POD does not otherwise fundamentally differ from current connectivity to the Exchange. The Exchange is not proposing to change the nature of the services provided today. Rather, POD will differ as to who provides the hardware.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations.

Nothing in the Proposal burdens intra-market competition because POD will be available to any customer and customers that wish to co-locate via POD can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services, including POD, based on the requirements of its business operations. POD will offer its users no special advantages relative to users of the Exchange's traditional colocation services.

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.

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 [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

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–PHLX–2024–28 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–PHLX–2024–28. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–PHLX–2024–28 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15413 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 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.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100468; File No. SR–MIAX–2024–26]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 9, 2024.

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 June 28, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 is filing a proposal to amend the MIAX Fee Schedule (''Fee Schedule'') to extend until September 30, 2024 the: (i) SPIKES Options Market Maker Incentive Program (the ''Incentive Program''); and (ii) waiver period for certain non-transaction fees applicable to Market Makers [3] that trade solely in Proprietary Products.[4]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

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

The Exchange proposes to amend the Fee Schedule to extend until September 30, 2024 the: (i) Incentive Program; and (ii) waiver period for certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products.

Background

On October 12, 2018, the Exchange received approval from the U.S. Securities and Exchange Commission (''Commission'') to list and trade on the Exchange options on the SPIKES® Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, ''SPY'').[5] The Exchange adopted its initial SPIKES options transaction fees on February 15, 2019 and adopted a new section of the Fee Schedule—Section 1)a)xi), SPIKES—for those fees.[6] Options on the SPIKES Index began trading on the Exchange on February 19, 2019.

On May 31, 2019, the Exchange filed its first proposal in a series of proposals with the Commission to amend the Fee Schedule to waive certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on the SPIKES Index) beginning June 1, 2019, through June 30, 2024.[7] In particular, the Exchange adopted fee waivers for Membership Application fees, monthly Market Maker Trading Permit fees, Application Programming Interface (''API'') Testing and Certification fees for Members,[8] and monthly MIAX Express Interface (''MEI'') Port [9] fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) throughout the entire period of June 1, 2019 through June 30, 2024.

On September 30, 2021, the Exchange filed its initial proposal to implement the Incentive Program for SPIKES options to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options beginning October 1, 2021, and ending December 31, 2021.[10] Technical details regarding the Incentive Program were published in a Regulatory Circular on September 30, 2021.[11] On October 12, 2021, the Exchange withdrew SR–MIAX–2021–45 and refiled its proposal to implement the Incentive Program to provide additional details.[12] In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2021) unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[13]

Between December 23, 2021, and April 3, 2024, the Exchange filed several proposals to extend the Incentive Program, with the last extension period

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ''Proprietary Product'' means a class of options that is listed exclusively on the Exchange. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR–MIAX–2018–14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES® Index).

[6] *See* Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR–MIAX–2019–11). The Exchange initially filed the proposal on February 15, 2019 (SR–MIAX–2019–04). That filing was withdrawn and replaced with SR–MIAX–2019–11. On September 30, 2020, the Exchange filed its proposal to, among other things, reorganize the Fee Schedule to adopt new Section 1)b), Proprietary Products Exchange Fees, and moved the fees and rebates for SPIKES options into new Section 1)b)i). *See* Securities Exchange Act Release Nos. 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39).

[7] *See* Securities Exchange Act Release Nos. 86109 (June 14, 2019), 84 FR 28860 (June 20, 2019) (SR–MIAX–2019–28); 87282 (October 10, 2019), 84 FR 55658 (October 17, 2019) (SR–MIAX–2019–43); 87897 (January 6, 2020), 85 FR 1346 (January 10, 2020) (SR–MIAX–2019–53); 89289 (July 10, 2020), 85 FR 43279 (July 16, 2020) (SR–MIAX–2020–22); 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39); 91498 (April 7, 2021), 86 FR 19293 (April 13, 2021) (SR–MIAX–2021–06); 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR–MIAX–2022–24); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR–MIAX–2022–32); 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR–MIAX–2022–47); 97887 (July 12, 2023), 88 FR 45936 (July 18, 2023) (SR–MIAX–2023–28); *and* 99047 (November 30, 2023), 88 FR 84861 (December 6, 2023) (SR–MIAX–2023–46).

[8] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[9] Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), footnote 28.

[10] *See* SR–MIAX–2021–45.

[11] *See* MIAX Options Regulatory Circular 2021–56, SPIKES Options Market Maker Incentive Program (September 30, 2021) *available at https://www.miaxglobal.com/sites/default/files/circular-files/MIAX_Options_RC_2021_56.pdf.*

[12] *See* Securities Exchange Act Release No. 93424 (October 26, 2021), 86 FR 60322 (November 1, 2021) (SR–MIAX–2021–49).

[13] *See id.*

ending June 30, 2024.[14] In each of those filings, the Exchange specifically noted that the Incentive Program would expire at the end of the then-current period unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[15]

Proposal To Extend the Incentive Program

The Exchange proposes to extend the Incentive Program for SPIKES options to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. Currently, to be eligible to participate in the Incentive Program, a Market Maker must meet certain minimum requirements related to quote spread width in certain in-the-money (ITM) and out-of-the-money (OTM) options as determined by the Exchange and communicated to Members via Regulatory Circular.[16] Market Makers must also satisfy a minimum time in the market in the front 2 expiry months of 70%, and have an average quote size of 25 contracts. The Exchange established two separate incentive compensation pools that are used to compensate Market Makers that satisfy the criteria pursuant to the Incentive Program.

The first pool (Incentive 1) has a total amount of $40,000 per month, which is allocated to Market Makers that meet the minimum requirements of the Incentive Program. Market Makers are required to meet minimum spread width requirements in a select number of ITM and OTM SPIKES option contracts as determined by the Exchange and communicated to Members via Regulatory Circular.[17] A complete description of how the Exchange calculates the minimum spread width requirements in ITM and OTM SPIKES options can be found in the published Regulatory Circular.[18] Market Makers are also required to maintain the minimum spread width, described above, for at least 70% of the time in the front two (2) SPIKES options contract expiry months and maintain an average quote size of at least 25 SPIKES options contracts. The amount available to each individual Market Maker is capped at $10,000 per month for satisfying the minimum requirements of the Incentive Program. In the event that more than four Market Makers meet the requirements of the Incentive Program, each qualifying Market Maker is entitled to receive a pro-rated share of the $40,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

The second pool (Incentive 2 Pool) is capped at a total amount of $100,000 per month which is used during the Incentive Program to further incentivize Market Makers who meet or exceed the requirements of Incentive 1 (''qualifying Market Makers'') to provide tighter quote width spreads. The Exchange ranks each qualifying Market Maker's quote width spread relative to each other qualifying Market Maker's quote width spread. Market Makers with tighter spreads in certain strikes, as determined by the Exchange and communicated to Members via Regulatory Circular,[19] are eligible to receive a pro-rated share of the compensation pool as calculated by the Exchange and communicated to Members via Regulatory Circular,[20] not to exceed $25,000 per Member per month. Qualifying Market Makers are ranked relative to each other based on the quality of their spread width (*i.e.,* tighter spreads are ranked higher than wider spreads) and the Market Maker with the best quality spread width receives the highest rebate, while other eligible qualifying Market Makers receive a rebate relative to their quality spread width.

The Exchange proposes to extend the Incentive Program until September 30, 2024. The Exchange does not propose to make any amendments to how it calculates any of the incentives provided for in Incentive Pools 1 or 2. The details of the Incentive Program can continue to be found in the Regulatory Circular that was published on September 30, 2021, to all Exchange Members.[21] The purpose of this extension is to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. The Exchange will announce the extension of the Incentive Program to all Members via a Regulatory Circular.[22]

Proposal To Extend the Fee Waivers for Market Markets That Trade Solely in Proprietary Products (Including Spikes Options)

The Exchange also proposes to extend the fee waiver for Membership Application fees, monthly Market Maker Trading Permit fees, Member API Testing and Certification fees, and monthly MEI Port fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2024.

Membership Application Fees

The Exchange currently assesses a one-time Membership Application fee for applications of potential Members. The Exchange assesses a one-time Membership Application fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX membership is finally denied. The one-time application fee is based upon the applicant's status as either a Market Maker or an Electronic Exchange Member (''EEM'').[23] A Market Maker is assessed a one-time Membership Application fee of $3,000.

The Exchange proposes that the waiver for the one-time Membership Application fee of $3,000 for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from June 30, 2024 until September 30, 2024, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to submit membership applications, which should result in an increase of potential liquidity in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after September 30, 2024.

Trading Permit Fees

The Exchange issues Trading Permits that confer the ability to transact on the Exchange. MIAX Trading Permits are issued to Market Makers and EEMs.

[14] *See* Securities Exchange Act Release Nos. 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63); 94574 (April 1, 2022), 87 FR 20492 (April 7, 2022) (SR–MIAX–2022–12); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR–MIAX–2022–24); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR–MIAX–2022–32); 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR–MIAX–2022–47); 97239 (April 3, 2023), 88 FR 20930 (April 7, 2023) (SR–MIAX–2023–13); 97883 (July 12, 2023), 88 FR 45941 (July 18, 2023) (SR–MIAX–2023–26); 99040 (November 29, 2023), 88 FR 84374 (December 5, 2023) (SR–MIAX–2023–47); *and* 99902 (April 3, 2024), 89 FR 24883 (April 9, 2024) (SR–MIAX–2024–17).

[15] *See id.*

[16] *See supra* note 11.

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] The Exchange notes that at the end of the extension period, the Incentive Program will expire unless the Exchange files another 19b–4 Filing to amend the terms or extend the Incentive Program.

[23] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

Members receiving Trading Permits during a particular calendar month are assessed monthly Trading Permit fees as set forth in the Fee Schedule. As it relates to Market Makers, MIAX currently assesses a monthly Trading Permit fee in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX MEI Ports in the production environment and is assigned to quote in one or more classes. MIAX assesses the monthly Market Maker Trading Permit fee for its Market Makers based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurements. A MIAX Market Maker is assessed a monthly Trading Permit fee according to the following table: [24]

Type of Trading Permit	Monthly MIAX Trading Permit fee	Market Maker assignments (the lesser of the applicable measurements below) Ω	
		Per Class	% of National average daily volume
Market Maker (includes RMM, LMM, PLMM).	$7,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
	$12,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
	*17,000.00	Up to 100 Classes	Up to 50% of Classes by volume.
	*22,000.00	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX.

Ω Excludes Proprietary Products.

*For these Monthly MIAX Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

MIAX proposes that the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from June 30, 2024 to September 30, 2024, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for Market Makers to provide liquidity in Proprietary Products on the Exchange, which should result in increasing potential order flow and volume in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness to potential Members seeking a Trading Permit that the Exchange intends to assess such a fee after September 30, 2024.

The Exchange also proposes that Market Makers who trade Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted with the symbol ''Ω'' following the table that shows the monthly Trading Permit fees currently assessed to Market Makers in Section (3)(b) of the Fee Schedule.

API Testing and Certification Fee

The Exchange assesses an API Testing and Certification fee to all Members depending upon Membership type. An API makes it possible for Members' software to communicate with MIAX software applications, and is subject to Members testing with, and certification by, MIAX. The Exchange offers four types of interfaces: (i) the Financial Information Exchange Port (''FIX Port''),[25] which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the Clearing Trade Drop Port (''CTD Port''),[26] which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants' respective clearing firms; and (iv) the FIX Drop Copy Port (''FXD Port''),[27] which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification fees for Market Makers are assessed (i) initially per API for CTD and MEI ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange currently assesses a Market Maker an API Testing and Certification fee of $2,500. The API Testing and Certification fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX's interfaces.

MIAX proposes to extend the waiver of the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from June 30, 2024 until September 30, 2024, which the Exchange proposes to state in the Fee

[24] *See* Fee Schedule, Section (3)(b).

[25] A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit simple and complex orders electronically to MIAX. *See* Fee Schedule, Section (5)(d)(i).

[26] Clearing Trade Drop (''CTD'') provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. *See* Fee Schedule, Section 5)d)iii.

[27] The FIX Drop Copy Port (''FXD'') is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information for simple and complex orders to FIX Drop Copy Port users who subscribe to the service. FIX Drop Copy Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section (5)(d)(iv).

Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to develop software applications to trade in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after September 30, 2024.

MEI Port Fees

MIAX assesses monthly MEI Port fees to Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon the class volume percentages set forth in the Fee Schedule. The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange assesses MIAX Market Makers the monthly MEI Port fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. MIAX assesses MEI Port fees on Market Makers according to the following table: [28]

Monthly MIAX MEI fees	Market Maker assignments (the lesser of the applicable measurements below) Ω	
	Per class	% of National average daily volume
$5,000.00	Up to 5 Classes	Up to 10% of Classes by volume.
$10,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
$14,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
$17,500.00 *	Up to 100 Classes	Up to 50% of Classes by volume.
$20,500.00 *	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX.

Ω Excludes Proprietary Products.

* For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

MIAX proposes to extend the waiver of the monthly MEI Port fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from June 30, 2024 until September 30, 2024, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposal is to continue to provide an incentive to Market Makers to connect to MIAX through the MEI Port such that they will be able to trade in MIAX Proprietary Products. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after September 30, 2024.

The Exchange notes that for the purposes of this proposed change, other Market Makers who trade MIAX Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted by the symbol ''Ω'' following the table that shows the monthly MEI Port Fees currently assessed for Market Makers in Section (5)(d)(ii) of the Fee Schedule.

The proposed extension of the fee waivers are targeted at market participants, particularly market makers, who are not currently members of MIAX, who may be interested in being a Market Maker in Proprietary Products on the Exchange. The Exchange estimates that there are fewer than ten (10) such market participants that could benefit from the extension of these fee waivers. The proposed extension of the fee waivers does not apply differently to different sizes of market participants, however the fee waivers do only apply to Market Makers (and not EEMs).

Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to continue to offer the fee waivers to Market Makers because the Exchange is seeking additional liquidity providers for Proprietary Products, in order to enhance liquidity and spreads in Proprietary Products, which is traditionally provided by Market Makers, as opposed to EEMs.

Implementation

The proposed fee changes are effective beginning July 1, 2024.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [29] in general, and furthers the objectives of Section 6(b)(4) of the Act [30] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act 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 and is not designed to permit unfair

[28] *See* Fee Schedule (5)(d)(ii).

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers and dealers.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to extend the Incentive Program for Market Makers in SPIKES options until September 30, 2024. The Incentive Program is reasonably designed because it will continue to incentivize Market Makers to provide quotes and increased liquidity in select SPIKES options contracts. The Incentive Program is reasonable, equitably allocated and not unfairly discriminatory because all Market Makers in SPIKES options may continue to qualify for Incentive 1 and Incentive 2, dependent upon each Market Maker's quoting in SPIKES options in a particular month. Additionally, if a SPIKES Market Maker does not satisfy the requirements of Incentive Pool 1 or 2, then it simply will not receive the rebate offered by the Incentive Program for that month.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer this financial incentive to SPIKES Market Makers because it will continue to benefit all market participants trading in SPIKES options. SPIKES options is a Proprietary Product on the Exchange and the continuation of the Incentive Program encourages SPIKES Market Makers to satisfy a heightened quoting standard, average quote size, and time in market. A continued increase in quoting activity and tighter quotes may yield a corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, while promoting market transparency and improving investor protection.

The Exchange believes that the Incentive Program is equitable and not unfairly discriminatory because it will continue to promote an increase in SPIKES options liquidity, which may facilitate tighter spreads and an increase in trading opportunities to the benefit of all market participants. The Exchange believes it is reasonable to operate the Incentive Program for a continued limited period of time to strengthen market quality for all market participants. The resulting increased volume and liquidity will benefit those Members who are eligible to participate in the Incentive Program and will also continue to benefit those Members who are not eligible to participate in the Incentive Program by providing more trading opportunities and tighter spreads.

Additionally, the Exchange believes that the proposal to extend the fee waiver period for certain non-transaction fees for Market Makers that trade solely in Proprietary Products is an equitable allocation of reasonable fees because the proposal continues to waive non-transaction fees for a limited period of time in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants in MIAX's Proprietary Products, including options on SPIKES. The Exchange believe the proposed extension of the fee waivers is fair and equitable and not unreasonably discriminatory because it applies to all market participants not currently registered as Market Makers at the Exchange. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker and trade solely in Proprietary Products in order to qualify for the fee waivers.

The Exchange believes that the proposed extension of the fee waivers is equitable and not unfairly discriminatory for Market Makers as compared to EEMs because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have.[31] Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

The Exchange believes it is reasonable and equitable to continue to waive the one-time Membership Application fee, monthly Trading Permit Fee, API Testing and Certification fee, and monthly MEI Port fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2024, since the waiver of such fees provides incentives to interested market participants to trade in Proprietary Products. This should result in increasing potential order flow and liquidity in MIAX Proprietary Products, including options on SPIKES.

The Exchange believes it is reasonable and equitable to continue to waive the API Testing and Certification fee assessable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2024, since the waiver of such fees provides incentives to interested Members to develop and test their APIs sooner. Determining system operability with the Exchange's system will in turn provide MIAX with potential order flow and liquidity providers in Proprietary Products.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory that Market Makers who trade in Proprietary Products along with multi-listed classes will continue to not have Proprietary Products counted toward those Market Makers' class assignment count or percentage of total national average daily volume for monthly Trading Permit fees and monthly MEI Port fees in order to incentivize existing Market Makers who currently trade in multi-listed classes to also trade in Proprietary Products, without incurring certain additional fees.

The Exchange believes that the proposed extension of the fee waivers constitutes an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The proposed extension of the fee waivers means that all prospective market makers that wish to become Market Maker Members of the Exchange and quote solely in Proprietary Products may do so and have the above-mentioned fees waived until September 30, 2024. The proposed extension of the fee waivers will continue to not apply to potential EEMs because the Exchange is seeking to enhance the quality of its markets in Proprietary Products through introducing more competition among Market Makers in Proprietary Products. In order to increase the competition, the Exchange believes that it must continue to waive entry type fees for such Market Makers. EEMs do not provide the benefit of enhanced liquidity which is provided by Market Makers, therefore the Exchange believes it is reasonable and not unfairly discriminatory to continue to only offer the proposed fee waivers to Market Makers (and not EEMs). Further, the Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Proprietary Products from an existing Market Maker's permit fees and port fees, in order to incentive such Market Makers to quote in Proprietary Products. The amount of a Market Maker's permit and port fee is determined by the number of classes quoted and volume of the Market Maker. By excluding Proprietary Products from such fees, the Exchange is able to incentivize Market

[31] *See, generally,* Exchange Rule 603.

Makers to quote in Proprietary Products. EEMs do not pay permit and port fees based on the classes traded or volume, so the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to only offer the exclusion to Market Makers (and not EEMs).

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.

Intra-Market Competition

The Exchange believes that the proposed extension of the Incentive Program to September 30, 2024, would continue to increase intra-market competition by incentivizing Market Makers to quote SPIKES options, which will continue to enhance the quality of quoting and increase the volume of contracts available to trade in SPIKES options. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

Additionally, the Exchange believes that the proposal to extend certain of the non-transaction fee waivers until September 30, 2024 for Market Makers that trade solely in Proprietary Products would increase intra-market competition by incentivizing new potential Market Makers to quote in Proprietary Products, which will enhance the quality of quoting and increase the volume of contracts in Proprietary Products traded on MIAX, including options on SPIKES. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for the Exchange's Proprietary Products. Enhanced market quality and increased transaction volume in Proprietary Products that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant (new Market Makers and existing Market Makers) will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants (such as EEMs) do not have.

Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the Incentive Program applies only to the Market Makers in SPIKES options, which are traded exclusively on the Exchange.

Additionally, the Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the fee waivers applies only to the Exchange's Proprietary Products (including options on SPIKES), which are traded exclusively on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[32] and Rule 19b–4(f)(2)[33] thereunder. 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.

[32] 15 U.S.C. 78s(b)(3)(A)(ii).

[33] 17 CFR 240.19b–4(f)(2).

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–MIAX–2024–26 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–MIAX–2024–26. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–MIAX–2024–26 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15399 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–666, OMB Control No. 3235–0725]

Proposed Collection; Comment Request; Extension: Contract Standard for Contractor Workforce Inclusion

Upon Written Request Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) provided that certain agencies, including the Commission, establish an Office of Minority and Women Inclusion (OMWI).[1] Section 342(c)(2) of the Dodd-Frank Act requires the OMWI Director to include in the Commission's procedures for evaluating contract proposals and hiring service providers a written statement that the contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors. To implement the acquisition-specific requirements of Section 342(c)(2) of the Dodd-Frank Act, the Commission adopted a Contract Standard for Contractor Workforce Inclusion (Contract Standard).

The Contract Standard, which is included in the Commission's solicitations and resulting contracts for services with a dollar value of $100,000 or more, contains a ''collection of information'' within the meaning of the Paperwork Reduction Act. The Contract Standard requires that a Commission contractor with 50 or more employees provide documentation, upon request from the OMWI Director, to demonstrate that it has made good faith efforts to ensure the fair inclusion of minorities and women in its workforce and, as applicable, to demonstrate its covered subcontractors have made such good faith efforts. The documentation requested may include, but is not limited to: (1) the total number of employees in the contractor's workforce, and the number of employees by race, ethnicity, gender, and job title or EEO–1 job category (*e.g.,* EEO–1 Report(s)); (2) a list of covered subcontract awards under the contract that includes the dollar amount of each subcontract, date of award, and the subcontractor's race, ethnicity, and/or gender ownership status; (3) the contractor's plan to ensure the fair inclusion of minorities and women in its workforce, including outreach efforts; and (4) for each covered subcontractor, the information requested in items 1 and 3 above. The OMWI Director will consider the information submitted in evaluating whether the contractor or subcontractor has complied with its obligations under the Contract Standard.

The information collection is mandatory.

Title of Collection: Contract Standard for Contractor Workforce Inclusion.

Type of Review: Extension of an Existing Approved Information Collection.

Frequency of Response: Annually.

Estimated Number of Respondents: 50.

Estimated Burden Hours per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50. The change in the estimated annual burden hours from 925 to 50 is due to a change in eligibility criteria for requesting documentation to only those contractors with 50 or more employees. This change in eligibility criteria eliminated any new recordkeeping burden since contractors with 50 or more employees are generally subject to the recordkeeping and reporting requirements under the regulations implementing Title VII of the Civil Rights Act[2] and Executive Order 11246.

Request for Comments: The 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. Written comments are invited on: (a) whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (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. Consideration will be given to comments and suggestions submitted in writing 60 days after the date of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 9, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15417 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100472; File No. SR–MIAX–2024–27]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Relating to the Continuing Education for Registered Persons as Provided Under Exchange Rule 1903

July 9, 2024.

Pursuant to the provisions of 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 June 28, 2024, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as 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.

[34] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5452.

[2] 42 U.S.C. 2000e, *et seq.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Interpretation and Policy .01 to Exchange Rule 1903, Continuing Education, to reopen the period by which eligible Members [3] who participate in the Maintaining Qualifications Program (''MQP'') will be able to complete their prescribed 2022 and 2023 continuing education content.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 amend Interpretation and Policy .01 to Exchange Rule 1903, Continuing Education, to provide eligible Members another opportunity to elect to reopen the period by which certain participants in the MQP will be able to complete their prescribed 2022 and 2023 continuing education content.

In 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') implemented rule changes, which amended its Continuing Education (''CE'') Program requirements to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual CE through a new program, the MQP.[4] Under FINRA Rule 1240.01, the MQP designated a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to March 15, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (''FSAWP'') [5] under FINRA Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) immediately prior to March 15, 2022 (collectively, ''Look-Back Individuals'').

In 2023, FINRA amended FINRA Rule 1240.01, to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the ''FINRA Second Enrollment Period'').[6] The proposed rule change required that Look-Back Individuals who elect to participate in the MQP during the FINRA Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024. Look-Back Individuals who are enrolled in the MQP, similar to other MQP participants, are able to complete any prescribed CE and renew their annual MQP participation through their FINRA Financial Professional Gateway (''FinPro'') accounts.

In response to FINRA's rule changes and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges, the Exchange implemented rule changes to align with FINRA's CE Program.[7] Such rules, among other things, provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing CE through the MQP. Further, Exchange Rule 1903, Interpretation and Policy .01, includes a look-back provision that, subject to specified conditions, extends the option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately preceding July 1, 2022, and (ii) individuals who have been participants of the FSAWP immediately preceding July 1, 2022 implementation (*i.e.,* Look-Back Individuals).

Exchange Rule 1903 also provided Look-Back Individuals with a second enrollment period, between September 18, 2023, and December 31, 2023 (the ''Exchange Second Enrollment Period''). Exchange Rule 1903, Interpretation and Policy .01, requires that Look-Back Individuals who elect to participate in the MQP during the Exchange Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.[8]

FINRA recently submitted a proposal related to its CE Program (the ''FINRA Rule Change'').[9] The proposal set forth changes to FINRA Rule 1240.01, to provide Look-Back Individuals enrolled in the MQP in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 CE content as of March 31, 2024, the opportunity to complete such content between May 22, 2024, and July 1, 2024, to be eligible to continue their participation in the MQP.[10] In addition, the proposed rule change provides that any such individuals who will have completed their prescribed 2022 and 2023 CE content between March 31,

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). Other exchanges, including the Exchange, subsequently filed copycat rule filings to align their continuing education rules with those of FINRA. *See* Securities Exchange Act Release No. 95140 (June 22, 2022), 87 FR 38438 (June 28, 2022) (SR–MIAX–2022–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1900, Registration Requirements, Exchange Rule 1903, Continuing Education Requirements, and Exchange Rule 1904, Electronic Filing Requirements for Uniform Forms).

[5] The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. The Exchange stopped accepting new participants for the FSAWP beginning on July 1, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

[6] *See* Securities Exchange Act Release No. 97184 (Mar. 22, 2023), 88 FR 18359 (Mar. 28, 2023) (SR–FINRA–2023–005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity to Elect to Participate in the Maintaining Qualifications Program)

[7] *See* Exchange Rules 1900, 1903, and 1904.

[8] The Exchange determined to treat the individuals who enrolled during the first period (preceding July 1, 2022) the same as those who enrolled during the second period (between September 18, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content. This is because those who had enrolled in the MQP during the first period satisfied all of the eligibility criteria for enrollment during the second period and would have been able to complete their prescribed CE content by March 31, 2024, had they chosen to enroll during the second period instead of enrolling during the first period.

[9] *See* Securities Exchange Act Release No. 100067 (May 6, 2024), 89 FR 40520 (May 10, 2024) (SR–FINRA–2024–006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Reopen the Period by Which Certain Participants in the Maintaining Qualifications Program May Complete Their Prescribed Continuing Education Content).

[10] This would include any Look-Back Individuals who were still in the process of completing their prescribed CE content as of March 31, 2024.

2024, and May 22, 2024, will be deemed to have completed such content by July 1, 2024, for purposes of the rule.

In the FINRA Rule Change, FINRA noted that it sent multiple reminders, including a March 16, 2024 email, to Look-Back Individuals who had enrolled in the MQP but had not completed their prescribed CE to remind them of the March 31, 2024 deadline. In the FINRA Rule Change, FINRA further noted that in the week leading up to the deadline, FINRA noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.[11] Per the FINRA Rule Change, FINRA believes that some of those individuals may have been confused by the layout of their FinPro accounts. Specifically, if they selected the 2024 renewal banner, which was prominently displayed on their FinPro accounts, and completed the renewal process, they would not have been automatically redirected to complete any prescribed CE. Therefore, individuals may have inadvertently assumed that completion of the renewal process alone would have satisfied all of the necessary requirements to continue their participation in the MQP.[12]

For similar reasons and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges, the Exchange is also proposing to amend its rules (*i.e.,* Exchange Rule 1903, Interpretation and Policy .01) to provide Look-Back Individuals enrolled in the MQP in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 CE content as of March 31, 2024, the opportunity to complete such content between the effective date of this filing, and July 1, 2024, to be eligible to continue their participation in the MQP.[13] In addition, the proposed rule change provides that any such individuals who will have completed their prescribed 2022 and 2023 CE content between March 31, 2024, and the effective date of this filing, will be deemed to have completed such content by July 1, 2024, for purposes of the rule.

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) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's rule proposal is intended to harmonize the Exchange's supervision rules, specifically with respect to the continuing education requirements with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange.

The Exchange believes that reopening the period by which Look-Back Individuals will be able to complete their prescribed 2022 and 2023 CE content is appropriate under the circumstances. As FINRA noted in the FINRA Rule Change, Look-Back Individuals who had enrolled in the MQP in 2022 and 2023 but had not completed their prescribed 2022 and 2023 CE content by the March 31, 2024 deadline may have been confused, as described above. The Exchange believes that participation in the MQP reduces unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. The Exchange believes that reopening the CE completion period, as proposed, will further these goals and objectives.

Further, the Exchange believes the proposed amendments reduce the possibility of a regulatory gap between Exchange and FINRA rules, providing more uniform standards across the securities industry. The Exchange believes that the proposed rule change will bring consistency and uniformity with FINRA's recently amended CE Program, which will, in turn, assist members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes make ministerial changes to the Exchange's CE rules to align them with the CE rules of FINRA, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[11] Look-Back Individuals who enrolled in the MQP have until December 31, 2024, to renew their participation in the MQP for 2024, provided that they complete their prescribed CE by the stated deadline.

[12] According to FINRA, a number of these individuals contacted FINRA to confirm whether they were required to satisfy any additional requirements other than completing the 2024 renewal. To provide FINRA with additional time to assess the situation, FINRA temporarily changed the March 31, 2024, due date for CE completion in its systems. This may have compounded the confusion because any Look-Back Individual who may have logged into their FinPro account during this time would have seen an interim CE completion date and would have been able to complete their prescribed CE content based on that interim CE completion date.

[13] This would include any Look-Back Individuals who were still in the process of completing their prescribed CE content as of March 31, 2024.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

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) of the Act [17] and Rule 19b-4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange has stated that a waiver of the operative delay would allow the Exchange to implement the proposed changes to its CE rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules. The Exchange has also stated that a waiver would provide more uniform standards across the securities industry and help to avoid confusion for Exchange members that are also FINRA members. The Exchange believes a waiver would also provide immediately clarity to impacted individuals, thus minimizing the potential for confusion regarding the time frames for satisfying continuing education content in order to maintain eligibility to participate in the continuing education program. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[21]

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 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.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 under Section 19(b)(2)(B) [22] 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–MIAX–2024–27 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–MIAX–2024–27. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also 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–MIAX–2024–27 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15403 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100471; File No. SR–CboeEDGX–2024–043]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule To Adopt Fees for Dedicated Cores

July 9, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 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

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Equities'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[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

The Exchange proposes to amend its fee schedule to adopt fees for Dedicated Cores, effective July 1, 2024. Effective July 1, 2024, the Exchange will begin allowing Users [3] to assign a Single Binary Order Entry (''BOE'') logical order entry port [4] to a single dedicated Central Processing Unit (CPU Core) (''Dedicated Core''). Historically, CPU Cores had been shared by logical order entry ports (*i.e.,* multiple logical ports from multiple firms may connect to a single CPU Core). Use of Dedicated Cores however, can provide reduced latency, enhanced throughput, and improved performance since a firm using a Dedicated Core is utilizing the full processing power of a CPU Core instead of sharing that power with other firms. This offering is completely voluntary and is available to all Users that wish to purchase Dedicated Cores. Users may utilize BOE logical order entry ports on shared CPU Cores, either in lieu of, or in addition to, their use of Dedicated Core(s). As such, Users are able to operate across a mix of shared and dedicated CPU Cores which the Exchange believes provides additional risk and capacity management. Further, Dedicated Cores are not required nor necessary to participate on the Exchange and as such Users may opt not to use Dedicated Cores at all.

The Exchange proposes to assess the following monthly fees for Users that wish to use Dedicated Cores and adopt a maximum limit. First, the Exchange proposes to provide up to two Dedicated Cores to all Users who wish to use Dedicated Cores, at no additional cost. For the use of more than two Dedicated Cores, the Exchange proposes to assess the following fees: $650 per Dedicated Core for 3–15 Dedicated Cores; $850 per Dedicated Core for 16–30 Dedicated Cores; and $1,050 per Dedicated Core for 31 or more Dedicated Cores. The proposed fees are progressive and the Exchange proposes to include the following example in the Fees Schedule to provide clarity as to how the fees will be applied. Particularly, the Exchange will provide the following example: if a User were to purchase 16 Dedicated Cores, it will be charged a total of $9,300 per month ($0 * 2 + $650 * 13 + $850 * 1). The Exchange also proposes to make clear in the Fees Schedule that the monthly fees are assessed and applied in their entirety and are not prorated. The Exchange notes the current standard fees assessed for BOE Logical Ports, whether used with Dedicated or shared CPU cores, will remain applicable and unchanged.[5]

Since the Exchange currently has a finite amount of physical space in its data centers in which its servers (and therefore corresponding CPU Cores) are located, the Exchange also proposes to prescribe a maximum limit on the number of Dedicated Cores that Users may purchase each month. The purpose of establishing these limits is to manage the allotment of Dedicated Cores in a fair manner and to prevent the Exchange from being required to expend large amounts of resources in order to provide an unlimited number of Dedicated Cores. The Exchange proposes to provide that Members will be limited to a maximum number of 60 Dedicated Cores [6] and Sponsoring Members will be limited to a maximum number of 25 Dedicated Cores for each of their Sponsored Access relationships.[7] The Exchange notes that it will continue monitoring Dedicated Core interest by all Users and allotment availability with the goal of increasing these limits to meet Users' needs if and when the demand is there and the Exchange is able to accommodate additional Dedicated Cores.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) [11] of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its

[3] A User may be either a Member or Sponsored Participant. The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. A Sponsored Participant may be a Member or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member subject to certain conditions. See Exchange Rule 11.3.

[4] Users may currently connect to the Exchange using a logical port available through an application programming interface (''API''), such as the Binary Order Entry (''BOE'') protocol. A BOE logical order entry port is used for order entry.

[5] The Exchange currently assesses $550 per port per month. Port fees will also continue to be assessed on the first two Dedicated Cores that Users receive at no additional cost. *See* Cboe EDGX Equities Fee Schedule.

[6] The prescribed maximum quantity of Dedicated Cores for Members applies regardless of whether that Member purchases the Dedicated Cores directly from the Exchange and/or through a Service Bureau. In a Service Bureau relationship, a customer allows its MPID to be used on the ports of a technology provider, or Service Bureau. One MPID may be allowed on several different Service Bureaus.

[7] The fee tier(s) applicable to Sponsoring Members are determined on a per Sponsored Access relationship basis and not on the combined total of Dedicated Cores across Sponsored Users. For example, under the proposed changes, a Sponsoring Member that has three Sponsored Access relationships is entitled to a total of 75 Dedicated Cores for those 3 Sponsored Access relationships but would be assessed fees separately based on the 25 Dedicated Cores for each Sponsored User (instead of combined total of 75 Dedicated Cores). For example, a Sponsoring Member with 3 Sponsored Access relationships would pay $16,950 per month if each Sponsored Access relationship purchased the maximum 25 Dedicated Cores. More specifically, the Sponsoring Member would be provided 2 Dedicated Cores at no additional cost for each Sponsored User under Tier 1 (total of 6 Dedicated Cores at no additional cost) and provided an additional 13 Dedicated Cores at $650 each for each Sponsored User, 10 Dedicated Cores at $850 each for each Sponsored User (combined total of 69 additional Dedicated Cores).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4).

Members and other persons using its facilities.

The Exchange believes the proposal is reasonable because the Exchange is offering any Users who wishes to utilize Dedicated Cores up to two Dedicated Cores at no additional cost. The Exchange believes the proposed fees are reasonable because Dedicated Cores provide a valuable service in that it may provide reduced latency, enhanced throughput, and improved performance compared to use of a shared CPU Core since a firm using a Dedicated Core is utilizing the full processing power of a CPU Core. The Exchange also emphasizes however, that the use of Dedicated Cores is not necessary for trading and as noted above, is entirely optional. Users can also continue to access the Exchange through shared CPU Cores at no additional cost. For example, less than half of the members of the Exchange's affiliate Cboe EDGA Exchange, Inc., (''Cboe EDGA'') currently use Dedicated Cores on Cboe EDGA. Depending on a firm's specific business needs, the proposal enables Users to choose to use Dedicated Cores in lieu of, or in addition to, shared CPU Cores (or as noted, not use Dedicated Cores at all). If a User finds little benefit in having Dedicated Cores, or determines Dedicated Cores are not cost-efficient for its needs or does not provide sufficient value to the firm, such User may continue its use of the shared CPU Cores, unchanged. The Exchange also has no plans to eliminate shared CPU Cores nor to require Users to purchase Dedicated Cores. The Exchange also notes that the proposed fees are the same as the fees recently adopted and assessed for Dedicated Cores on its affiliated exchange, Cboe BZX Exchange, Inc. (''Cboe BZX'').[12]

The Exchange also believes that the proposed Dedicated Core fees are equitable and not unfairly discriminatory because they continue to be assessed uniformly to similarly situated users in that all Users who choose to purchase Dedicated Cores will be subject to the same proposed tiered fee schedule. Further all Users are entitled to up to 2 Dedicated Cores at no additional cost. The Exchange believes the proposed ascending fee structure is also reasonable, equitable and not unfairly discriminatory as it is designed so that firms that use a higher allotment of the Exchange's finite number of Dedicated Cores pay higher rates, rather than placing that burden on market participants that have more modest needs who will have the flexibility of obtaining Dedicated Cores at lower price points in the lower tiers. As such, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the ascending fee structure reflects the (finite) resources consumed by the various needs of market participants—that is, the lowest Dedicated Core consuming Users pay the least, and highest Dedicated Core consuming Users pay the most. Other exchanges similarly assess higher fees to those that consume more Exchange resources.[13] It's also designed to encourage firms to manage their needs in a fair manner and to prevent the Exchange from being required to expend large amounts of resources in order to provide an additional number of Dedicated Cores. Moreover, as discussed above and in more detail below, the Exchange cannot currently offer an unlimited number of Dedicated Cores due in part to physical space constraints. The Exchange believes the proposed ascending fee structure is another appropriate means, in conjunction with an established cap, to manage this finite resource and ensure the resource is apportioned more fairly.

The Exchange believes it is reasonable to limit the number of Dedicated Cores Users can purchase because the Exchange has a finite amount of space in its third-party data centers to accommodate CPU cores, including Dedicated Cores. The Exchange must also take into account timing considerations in procuring additional Dedicated Cores and related hardware such as servers, switches, optics and cables, as well as the readiness of the Exchange's data center to accommodate additional Dedicated Cores in the Exchange's respective Order Handler Cabinets. The Exchange will monitor market participant demand and space availability and endeavor to adjust the limit if and when the Exchange is able to accommodate additional Dedicated Cores. The Exchange monitors its capacity and data center space and thus is in the best place to determine these limits and modify them as appropriate in response to changes to this capacity and space, as well as market demand. For example, Cboe EDGA has increased the prescribed maximum limit twice since the launch of Dedicated Cores on its exchange on February 26, 2024 as a result of evaluating the demand relative to Dedicated Cores availability.[14] The proposed limits also apply uniformly to similarly situated market participants (*i.e.,* all Members are subject to the same limit and all Sponsored Participants are subject to the same limit, respectively). The Exchange believes it's not unfairly discriminatory to provide for different limits for different types of Users. For example, the Exchange believe it's not unfairly discriminatory to provide for an initial lower limit to be allocated for Sponsored Participants because unlike Members, Sponsored Participants are able to access the Exchange without paying a Membership Fee. Members also have more regulatory obligations and risk that Sponsored Participants do not. For example, while Sponsored Participants must agree to comply with the Rules of the Exchange, it is the Sponsoring Member of that Sponsored Participant that remains ultimately responsible for all orders entered on or through the Exchange by that Sponsored Participant. The industry also has a history of applying fees differently to Members as compared to Sponsored Participants.[15] The Exchange believes its proposed maximum limits, and distinction between Members and Sponsored Users, is another appropriate means to help the Exchange manage its allotment of Dedicated Cores and better ensure this finite resource is apportioned fairly.

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 intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed tiered fee structure will apply equally to all similarly situated Users that choose to use Dedicated Cores. As discussed above, Dedicated Cores are optional and Users may choose to utilize Dedicated Cores, or not, based on their views of the additional benefits and added value provided by utilizing a Dedicated Core. The E9xchange believes the proposed fees will be assessed proportionately to the potential value or benefit received by Users with a greater number of Dedicated Cores and notes that Users may determine at any time to cease using Dedicated Cores. As

[12] *See* Cboe U.S. Equities Fee Schedule, BZX Equities, Dedicated Cores. *See* Securities Exchange Act Release No. 100395 (June 21, 2024) 89 FR 53690 (June 27, 2024) (SR–CboeBZX–2024–054).

[13] *See also* Cboe U.S. Options Fee Schedule, BZX Options, Options Logical Port Fees, Ports with Bulk Quoting Capabilities.

[14] *See* Securities Exchange Act Release No. 99983 (April 17, 2024) 89 FR 30418 (April 23, 2024) (SR–CboeEDGA–2024–014) and Securities Exchange Act Release No. 100300 (June 10, 2024) 89 FR 50653 (June 14, 2024) SR–CboeEDGA–2024–020.

[15] *See e.g.,* Securities Exchange Act Release No. 68342 (December 3, 2012) 77 FR 73096 (December 7, 2012) (SR–CBOE–2012–114).and Securities Exchange Act Release No. 66082 (January 3, 2012) 77 FR 1101 (January 9, 2012) (SR–C2–2011–041).

discussed, Users can also continue to access the Exchange through shared CPU Cores at no additional cost. Finally, all Users will be entitled to two Dedicated Cores at no additional cost.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market, including competition for exchange memberships. Market Participants have numerous alternative venues that they may participate on, including 15 other equities exchanges, as well as off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to submit their order flow to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[17] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[17] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 [19] thereunder. 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–CboeEDGX–2024–043 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–CboeEDGX–2024–043. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–CboeEDGX–2024–043 and should be submitted on or before August 5, 2024.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15402 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, July 18, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5

U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: July 11, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–15590 Filed 7–11–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100481; File No. SR–BX–2024–021]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Launch Proximity-On-Demand, a Managed Colocation Solution

July 9, 2024.

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 June 28, 2024, Nasdaq BX, Inc. (''BX'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to launch Proximity-On-Demand, a managed colocation solution.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

The Exchange proposes to launch Proximity-On-Demand (''POD''), a managed colocation solution. POD will offer colocation customers a convenient variant of colocation where applications are deployed on managed infrastructure in the form of virtual or dedicated servers in the co-location space.

Current Co-Location Offering

The Exchange currently offers colocation services, which include a suite of data center space, power, telecommunication, and other ancillary products and services that allow customers to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange. The use of colocation services is entirely voluntary and colocation services are available to all market participants who desire them.

Colocation customers are not provided any separate or superior means of direct access to the Exchange quoting and trading facilities. Nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among colocation customers themselves within the data center (or any future expansions to the data center).[3]

In addition, all orders sent to the Exchange market enter the marketplace through the same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, the Exchange has created no special market technology or programming that is available only to co-located customers and the Exchange has organized its systems to minimize, to the greatest extent possible, any advantage for one customer versus another.

Proximity-On-Demand

POD will be an alternative to the traditional offering of space and power for the physical colocation of customers' equipment. The Exchange will continue to offer its traditional colocation services.

With POD, customers will not need to order cabinets and power to install a server or network hardware in the Exchange's data center to be able to set up their systems and access the market directly. Instead, POD will provide customers with a variant of colocation where applications are deployed on a shared computing infrastructure [4] co-located in the data center,[5] providing customers with a convenient avenue to do business on the Exchange. With the Exchange's traditional colocation offering, the Exchange provides space and power and customers provide the hardware. With POD, the Exchange will provide the hardware. This allows the Exchange's customers to connect more quickly and with lower cost.

Customers will be able to select a dedicated server or a virtual machine. A dedicated server is single-tenant environment, meaning that only one customer has access to the server hardware. A virtual machine is a computing environment where each customer has exclusive access to their virtualized server, including its operating system and applications. While customers will control their virtual machines independently, the physical hardware resources, such as the CPU, memory, and storage, are

[3] Although the proposal and launch of POD are not dependent on the expansion of the data center, the Exchange notes that is in the process of expanding its data center in Carteret, New Jersey. Client connections to the matching engine will be equal across the board, within and among the current data center and the expansion.

[4] Shared computing infrastructure means that the Exchange would provide the infrastructure, including hardware, that can be used by multiple customers.

[5] POD will be housed within the same data center as the existing traditional colocation offering and Exchange systems, located in Carteret, New Jersey.

shared among multiple virtual machines on the same physical server. Hypervisor technology keeps the separate customer operating systems securely segmented from each other, allowing a single server to support multiple virtual machines. This allows quicker deployment times and provides customers with the flexibility to dynamically adjust the amount of compute resources needed without requiring hardware changes. The Exchange anticipates that customers will choose a dedicated server where better performance is required but may prefer a virtual server for short-lived requirements or less performance-sensitive workloads.

The servers (dedicated and virtual) for POD will be located in a cabinet in the colocation space at the data center. Each customer will have their own logical network that is fully isolated and not shared with other customers. Those customers selecting a dedicated server would also have the option to add an analytics service.[6] The analytics service will provide the ability to monitor network traffic to and from the POD infrastructure, allowing customers access to data about bandwidth usage, latency, and information related to Precision Time Protocol (PTP) timestamped messages.

Access to POD will be available via virtual private network (VPN) or Secure Shell (SSH), similar to how customers would access their fully owned co-located hardware. Customers will be able to choose from several existing options for physical connectivity, including 1G Ultra, 10G, 10G Ultra, and 40G. POD will provide access to the market through the same Extranet network as is used currently by existing colocation customers. To be clear, POD will not afford its users any special advantages relative to users of its traditional colocation services.

Exchanges offer colocation services to facilitate the trading activities of those market participants who believe that colocation enhances the efficiency of their trading. The Exchange believes that the launch of POD will benefit an underserved market segment, including a niche of smaller customers who do not currently co-locate in any form at the data center but wish to do so. These smaller trading firms that do not directly connect and interface with the Exchange may struggle with the complexity, upfront investment, ongoing expense, and knowledge gaps required to code, connect, host and manage their own infrastructure, and trade directly with the Exchange.

The Exchange notes that similar services are currently offered by, and customers may obtain such service from, managed service providers that operate at the Carteret data center. For example, Pico and Options-IT currently offer managed service colocation at the Carteret data center.[7] In addition to managed service providers currently offering POD-like services at the data center, additional providers offer similar services in other locations and will likely be in the Carteret data center in the future as well.[8] ICE offers a comparable service, ''Compute on Demand,'' [9] in select locations, including at NY4 (located in Secaucus, New Jersey).[10] Customers of ICE's Compute on Demand could (and presumably do) connect to national securities exchanges.

POD will provide customers with increased options for colocation. POD will be entirely optional and available to all market participants who desire to subscribe to POD. It is a business decision of each firm whether to subscribe to POD. Rather than choosing POD, customers may choose to (1) directly co-locate at the data center by ordering cabinet space and power, and placing their equipment at the data center; (2) co-locate through a third party; or (3) not co-locate at all.

Implementation

The Exchange intends to submit a fee filing in the future to establish fees for POD, including fees for a dedicated server, a dedicated server with analytics, and a virtual machine. Implementation of the proposal described herein to offer POD would coincide with the subsequent fee filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] 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 because POD would provide customers with increased optionality to access the Exchange. The Exchange operates in a highly competitive market in which exchanges offer colocation services to facilitate the trading activities of those customers who believe that colocation enhances the efficiency of their trading. POD is a voluntary variant of colocation where customers can directly access the market without needing to procure physical hardware independently, instead they can use a shared computing infrastructure co-located in the data center.

The Exchange believes that the launch of POD will benefit an underserved market segment, including smaller customers who do not currently co-locate in any form at the data center but wish to do so. These smaller trading firms that do not directly connect and interface with the Exchange may struggle with the complexity, upfront investment, ongoing expense, and knowledge gaps required to code, connect, host and manage their own infrastructure, and trade directly with the Exchange. As such, the Exchange believes that the proposal would further the objective of removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The proposal would benefit the public interest by providing customers more colocation options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. As noted above, POD will be entirely optional and available to all market participants who desire to subscribe to POD. Rather than choosing to co-locate via POD, customers may choose to (1) directly co-locate at the data center by ordering cabinet space and power, and placing their equipment at the data center; (2) co-locate through a third party; or (3) not co-locate at all. Services comparable to POD are currently offered by, and customers may obtain such service from, any managed

[6] The analytics service is not available for virtual machines because the compute resourcing for operating analytics is incompatible with virtual machines.

[7] *See https://www.pico.net/infrastructure/colocation-hosting/; https://www.options-it.com/products/trading-infrastructure/exchange-colos/.*

[8] *See, e.g., https://deploy.equinix.com/product/bare-metal/; https://tnsi.com/resource/fin/tns-dedicated-server-comprehensive-cloud-server-management-press-release/.*

[9] *See https://www.ice.com/fixed-income-data-services/access-and-delivery/connectivity-and-feeds/hosting-managed-services#demand.* Compute on Demand provides customers with a managed solution and is a delivery model in which computing resources are made available to customers on an on-demand basis. ICE offers Compute on Demand in collaboration with Beeks. The Exchange also intends to launch POD in partnership with Beeks. Beeks will provide the hardware that will allow the Exchange to offer POD. In addition, the Johannesburg Stock Exchange currently offers an advanced managed infrastructure as a service solution, similar to POD, in collaboration with Beeks. *See https://beeksgroup.com/news/johannesburg-stock-exchange-jse-choose-beeks-and-ipc-to-power-private-cloud-deployments-for-their-customers/.*

[10] Cboe affiliated exchanges utilize the Equinix NY4 data center in Secaucus, NJ.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

service providers that operate at the Carteret data center.

Again, POD will offer its users no special advantages relative to users of the Exchange's traditional colocation services. Though POD will allow customers to use Exchange-provided hardware to access the Exchange, POD does not otherwise fundamentally differ from current connectivity to the Exchange. The Exchange is not proposing to change the nature of the services provided today. Rather, POD will differ as to who provides the hardware.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations.

Nothing in the Proposal burdens intra-market competition because POD will be available to any customer and customers that wish to co-locate via POD can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services, including POD, based on the requirements of its business operations. POD will offer its users no special advantages relative to users of the Exchange's traditional colocation services.

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.

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[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

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–BX–2024–021 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–BX–2024–021. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–BX–2024–021 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15412 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 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.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100477; File No. SR–CboeBZX–2024–061]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Company Listing Fees Under Exchange Rule 14.13

July 9, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2024, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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 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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to modify the Company Listing Fees under Exchange Rule 14.13.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

The Exchange proposes a clean-up change to Rule 14.13(b) to correct a drafting error from a previous amendment to the Company Listings Fees that delineated the Application Fee from the Entry Fee in the Exchange's rulebook.[3] As a result, a particular exception to the Application Fee and Entry Fee was no longer applicable to both fee types, and other exceptions to the Application Fee and Entry Fee were unclearly listed under only one fee type in the Exchange's Rules. Now, the Exchange proposes to amend its rules to provide that both the Application Fee and Entry Fee are part of the ''Initial Listing Fees'', and to make structural changes to existing Rule 14.13 to clearly provide any exceptions are applicable to the Initial Listing Fees.[4]

The Exchange proposes to adopt Rule 14.13(b)(1), which would be titled ''Initial Listing Fees''. Thereunder, proposed Rules 14.13(b)(1)(A) and (B) would provide for the Application Fee and Entry Fee, respectively, which are currently provided under Rule 14.13(b)(1) and (2). The Exchange proposes no substantive change to the Application Fees provided under proposed Rule 14.13(b)(1)(A)(i)–(iii), except to update cross references to Rule 14.13 in proposed Rule 14.13(b)(1)(A)(iii). Similarly, the Exchange proposes to re-letter Rules 14.13(b)(2)(A) through (E) to Rules 14.13(b)(1)(B)(i) through (v), including any corresponding re-numbering or re-lettering to subparagraphs thereunder. The Exchange proposes no substantive change to proposed Rules 14.13(b)(1)(B)(i) through (v) except to update cross-references to Rule 14.13 in Rule 14.13(b)(1)(B)(iii).

Next, the Exchange proposes to delete existing Rule 14.13(b)(2)(G) which is currently reserved and contains no substantive text. The Exchange also proposes to re-letter existing Rules 14.13(b)(2)(F), (H), and (I) to proposed Rules 14.13(b)(1)(C), (D), and (E), respectively. By re-lettering these paragraphs, they will fall under the Initial Listing Fees section of the Rule and the Exchange believes such change will more clearly provide that those Rules are applicable to all Initial Listing Fees, regardless of whether they are an Application Fee or Entry Fee.

Prior to the Previous Amendment, the Application Fee was a subset of the Entry Fee but the Previous Amendment created a delineation between the Application Fee and Entry Fee in order to make the Rule easier to read. The proposal, however, did not make a corresponding amendment to Rule 14.13(b)(2)(F) to provide that the Exchange Board (the ''Board'') or its designee may defer or waive any part of the Application Fee and/or Entry Fee. Now, the Exchange proposes to correct that oversight by updating proposed Rule 14.13(b)(1)(C) to provide that such discretion applies to the Initial Listing Fees, which includes both the Application Fee and Entry Fee.

The Exchange is also proposing to delete cross-references to Rule 14.13(b)(2) from proposed Rules 14.13(b)(2)(D) and (E). While the Exchange updated proposed Rules 14.13(b)(1)(D) and (E) in the Previous Amendment to apply to both the Application Fee and Entry Fee, those provisions were provided for only under the Entry Fee portion of the Rule, which the Exchange believes may be unclear or cause confusion. Accordingly, the Exchange believes that the proposed re-lettering of those rules will clearly provide that the exceptions apply to the Initial Listing Fees (which include both the Application Fee and Entry Fee).

In light of the structural changes proposed above, the Exchange proposes to re-number existing Rules 14.13(b)(3) and (4) to Rules 14.13(b)(2) and (3). The Exchange also proposes to update cross-references to Rule 14.13 in proposed Rules 14.13(b)(2)(C), (H), (I), and (K).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[8] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange first notes that its corporate listing business operates in a highly-competitive market in which Companies can readily list on another national securities exchange if they deem fee levels or any other factor at a particular venue to be insufficient or excessive. Exchange Rule 14.13 reflects a competitive pricing structure designed to incentivize Companies to list new securities, which the Exchange believes will enhance competition both among Companies and listing venues, to the benefit of investors.

The Exchange believes that the proposed changes will add clarity to the Exchange's rulebook, to the benefit of all

[3] *See* Securities Exchange Act No. 98991 (November 20, 2023) 88 FR 82933 (November 27, 2023) (SR–CboeBZX–2023–092) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delineate the Application Fee From the Entry Fee, To Increase the Application Fee for Tier I and Tier II Securities Listed on the Exchange in Certain Circumstances, To Change the Assessment Date of the Entry Fee, and To Clarify That Both the Entry Fee and Application Fee Are Non-Refundable as Provided in Exchange Rule 14.13) (the ''Previous Amendment'').

[4] The Exchange initially filed this proposed rule change on June 7, 2024 (SR–CboeBZX–2024–053). On June 17, 2024, the Exchange withdrew that filing and submitted SR–CboeBZX–2024–059. On June 26, 2024, the Exchange withdrew that filing and submitted this filing.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78f(b)(4).

investors. As proposed, both the Application Fee and Entry Fee will be considered part of the Initial Listings Fee. Further, any exceptions to such Initial Listings Fees will be clearly set forth thereunder. The Exchange also believes that the deletion of an unused Rule provision (*i.e.,* Rule 14.13(b)(2)(G)) and updates to any cross-references within Rule 14.13 based on the proposed changes will provide for a clear and consistent rulebook, which will benefit all investors.

The Exchange believes it is reasonable to allow the Board of Directors or its designee, in its discretion, to defer or waive all or any part of the Initial Listing Fees described in proposed Rule 14.13(b)(1). Prior to the Previous Amendment, the Application Fee was a subset of the Entry Fee but the Previous Amendment created a delineation between the Application Fee and Entry Fee in order to make the Rule easier to read, but the proposal did not make a corresponding amendment to Rule 14.13(b)(2)(F) to provide that the Board or its designee may defer or waive any part of the Application Fee and/or Entry Fee. The Exchange's proposal would correct that drafting error by updating proposed Rule 14.13(b)(1)(C) to provide that such discretion applies to the Initial Listing Fees, which includes both the Application Fee and Entry Fee. The Exchange notes that another exchange's rules have long provided similar authority to its board of directors or its designee to defer or waive all or any part of the entry fee, which includes the application fee. Specifically, the Nasdaq Stock Market LLC (''Nasdaq'') rules provide that the application fee falls under the entry fees of its rulebook,[9] in a similar fashion to Exchange Rules prior to the Previous Amendment. Nasdaq Rules also provide that its board of directors or its designee may, in its discretion defer or waive all or any part of the entry fee prescribed in its company listing fees rules.

Given the foregoing, the Exchange believes the proposed fee amendments are consistent with 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 market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing.

The proposed change is a clean-up change to Rule 14.13(b)(2)(F) to correct a drafting error from a previous amendment to the Company Listings Fees that delineated the Application Fee from the Entry Fee in the Exchange's rulebook. As a result, a particular exception to the Application Fee and Entry Fee was no longer applicable to both fee types, and other exceptions to the Application Fee and Entry Fee were unclearly listed under only one fee type under the Rule. The proposed amendments would provide that both the Application Fee and Entry Fee are part of the ''Initial Listing Fees'' and would make structural changes to existing Rule 14.13 to clearly provide any exceptions applicable to the Initial Listing Fees. As the proposed amendments are designed to add clarity to the Exchange's rulebook and to correct a drafting error, the Exchange does not believe the proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed amendment does not encumber competition for listings with other listing venues, which are similarly free to set their fees. Rather, it reflects competition among listing venues and will further enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 [11] thereunder. 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–CboeBZX–2024–061 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–CboeBZX–2024–061. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–CboeBZX–2024–061 and should be submitted on or before August 5, 2024.

[9] *See* Nasdaq Rule 5920(a)(2).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15408 Filed 7–12–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100469; File No. SR–MEMX–2024–26]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Transaction Pricing

July 9, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 28, 2024, MEMX LLC (''MEMX'' 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 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 is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on July 1, 2024. The text of the proposed rule change is provided in Exhibit 5.

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

The purpose of the proposed rule change is to amend the Fee Schedule to: (1) adopt a new tier under the Liquidity Provision Tiers; (2) modify the required criteria under Liquidity Provision Tiers 2, 3, and 4; (3) modify NBBO Setter Tier 1 by modifying the required criteria under such tier; and (4) eliminate the DLI Additive Rebate, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16.1% of the total market share of executed volume of equities trading.[4] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2.1% of the overall market share.[5] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Adoption of New Liquidity Provision Tier

The Exchange currently provides a standard rebate of $0.0015 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''). The Exchange also currently offers Liquidity Provision Tiers 1–5, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each tier. The Exchange now proposes to adopt a new tier under the Liquidity Provision Tiers, which, as proposed, would be the new Liquidity Provision Tier 1, and the current Liquidity Provision Tiers 1, 2, 3, 4 and 5 would be renumbered as Liquidity Provision Tiers 2, 3, 4, 5 and 6 (hereinafter referred to as such). The applicable rebates and required criteria under Liquidity Provision Tiers 2, 3, 4, 5 and 6, would remain unchanged, except for the required criteria under Liquidity Provision Tiers 2, 3, and 4, which the Exchange is proposing to modify, as further described below.

Under the proposed new Liquidity Provision Tier 1, the Exchange will provide an enhanced rebate of $0.0034 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving either: (1) an ADAV [6] (excluding Retail Orders) that is equal to or greater than 0.50% of the TCV,[7] or (2) a Step-Up ADAV [8] June

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] Market share percentage calculated as of June 26, 2024. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[5] *Id.*

[6] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and ''Displayed ADAV'' means ADAV with respect to displayed orders.

[7] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The pricing for the proposed new Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 1'' with a Fee Code of ''B1'', ''D1'', ''J1'', or ''I1'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange also notes that the pricing for Liquidity Provision Tiers 2–5 will be referred to under the existing applicable descriptions and Fee Codes, and the pricing for Liquidity Provision Tier 6 will be referred to by the Exchange under the new description ''Added displayed volume, Liquidity Provision Tier 6'' with a Fee Code of ''B6'', ''D6'', ''J6'', or ''I6'' as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[8] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

2024 (excluding Retail Orders) that is equal to or greater than 0.07% of the TCV in securities priced at or above $1.00 per share and an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share.[9] Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 1 will expire no later than December 31, 2024, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule. Finally, the Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 1 a rebate of 0.075% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is currently applicable to such executions for all Members.

The proposed new Liquidity Provision Tier 1 is designed to encourage Members to maintain or increase their order flow that adds displayed liquidity to the Exchange in order to qualify for the proposed enhanced rebate for executions of Added Displayed Volume, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants.

Modify Liquidity Provision Tiers 2–4

The Exchange is also proposing to modify the required criteria under Liquidity Provision Tiers 2, 3, and 4. First, with respect to Liquidity Provision Tier 2 (previously named Liquidity Provision Tier 1, as described above), the Exchange currently provides an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV [10] that is equal to or greater than 6,000,000 shares. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2 such that a Member would qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.40% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV in securities priced at or above $1.00 per share and a Non-Displayed ADAV that is equal to or greater than 6,000,000 shares. Thus, such proposed change would decrease the ADAV requirement in criteria (1) and modify alternative criteria (2) by excluding securities priced below $1.00 from the TCV calculation. In other words, previously, a Member qualified for criteria (2) of the tier by achieving an ADAV of 0.30% of the total TCV (as well as a Non-Displayed ADAV of at least 6,000,000 shares), and now the Exchange is proposing that a Member would qualify for such criteria (2) by achieving an ADAV of 0.30% of the TCV only in securities priced at or above $1.00 per share (again, as well as a Non-Displayed ADAV of at least 6,000,000 shares).[11] The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 3 (previously named Liquidity Provision Tier 2, as described above), the Exchange currently provides an enhanced rebate of $0.0032 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.20% of the TCV and an ADV [12] that is equal to or greater than 0.35% of the TCV. Now, the Exchange proposes to modify the required criteria under Liquidity Provision Tier 3 such that Members qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share and an ADV that is equal to or greater than 0.40% of the TCV in securities priced at or above $1.00 per share; or (2) a Step-Up ADAV from June 2024 (excluding Retail Orders) that is equal to or greater than 0.05% of the TCV in securities priced at or above $1.00 per share and an ADAV (excluding Retail Orders) that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share; or (3) an ADAV that is equal to or greater than 0.30% of the TCV. Thus, such proposed change would modify the existing criteria as well as add two alternative criteria. First, the Exchange is proposing to modify the existing criteria (now alternative criteria (1)) by excluding securities priced below $1.00 from the TCV calculation in the ADAV requirement, and increasing the ADV requirement from 0.35% to 0.40% of the TCV, again excluding securities priced below $1.00 from the TCV calculation. The two additional alternative criteria are proposed criteria (2), which includes a combined Step-Up ADAV and ADAV requirement, and proposed criteria (3), which includes an ADAV requirement. The Exchange is not proposing to change the rebate provided under such tier. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 3 will expire no later than December 31, 2024, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule.

With respect to Liquidity Provision Tier 4 (previously named Liquidity Provision Tier 3, as described above), the Exchange currently provides an enhanced rebate of $0.0030 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.175% of the TCV. Now, the Exchange proposes to modify the required criteria under Liquidity Provision Tier 4 such that Members qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share; or (2) an ADAV that is equal to or greater than 0.175% of the TCV. Thus, such proposed change would add alternative criteria (1) and keep the existing criteria intact as alternative criteria (2). The Exchange is not proposing to change the rebate provided under such tier.

The Exchange believes that the tiered pricing structure for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tiers 2, 3, and 4 provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of

[9] The Exchange is also proposing to include a new note under the Notes section of the Fee Schedule that clarifies to the extent any tiers have required criteria that applies only to securities priced at or above $1.00 per share (as seen in criteria (2) of the proposed Liquidity Provision Tier 1), the Exchange determines whether a security should be included in the calculation of the ADV, ADAV, or TCV, as applicable, in securities priced at or above $1.00 per share by utilizing the closing price of the security on the date of execution.

[10] As set forth on the Fee Schedule, ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

[11] To clarify, in calculating a Member's ADAV for purposes of achieving criteria (2) of Liquidity Provision Tier 2, the Exchange will include executions in securities priced below $1.00.

[12] As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

Added Displayed Volume provided under each of the Liquidity Provision Tiers remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

NBBO Setter Tier

The Exchange currently offers NBBO Setter Tier 1 under which a Member may receive an additive rebate of $0.0002 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in securities priced at or above $1.00 per share that establish the NBBO and have a Fee Code B [13] (such orders, ''Setter Volume''), and an additive rebate of $0.0001 per share for executions of Added Displayed Volume (other than Retail Orders) that do not establish the NBBO (*i.e.,* Fee Codes D and J) [14] by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 5,000,000 shares; or (2) an ADAV in securities priced at or above $1.00 per share (excluding Retail Orders) that is equal to or greater than 0.30% of the TCV in securities priced at or above over $1.00 per share.[15] Now, the Exchange proposes to modify the required criteria under NBBO Setter Tier 1 such that a Member would now qualify for such tier by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 5,000,000 shares; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 2,000,000 shares and an ADAV in securities priced at or above $1.00 per share (excluding Retail Orders) that is equal to or greater than 0.30% of the TCV in securities priced at or above over $1.00 per share. Thus, such proposed change keeps the first alternative criteria intact with no changes but modifies the second alternative criteria by adding a requirement that a Member also achieve an ADAV with respect to orders with Fee Code B that is equal to or greater than 2,000,000 shares.[16] The Exchange is not proposing to change the amount of the additive rebates provided under the NBBO Setter Tier 1.

The Exchange believes that the proposed modified criteria provides an incremental incentive for Members to strive for higher ADAV in NBBO setting orders (*i.e.,* Fee Code B) on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange also believes that the criteria change reflects a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. The Exchange believes that the proposed modified criteria would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members.

DLI Additive Rebate

Lastly, the Exchange proposes to eliminate the DLI Additive Rebate. Currently, the Exchange offers a DLI Additive Rebate incentive that is applicable to DLI Tier 1, which provides an additive rebate of $0.0005 per share for executions of Added Displayed Volume for a Member that qualifies for DLI Tier 1 as well as either the criteria under the previous Liquidity Provision Tier 1 or Liquidity Provision Tier 2. The Exchange now proposes to eliminate such DLI Additive Rebate. The purpose of eliminating the DLI Additive Rebate is for business and competitive reasons, as the Exchange believes the elimination of such additive rebate would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing, which would enable the Exchange to redirect future resources and funding into other incentives and tiers intended to incentivize increased order flow. For these reasons, the Exchange no longer wishes to, nor is it required to, maintain such tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on

[13] The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

[14] The Exchange notes that orders with Fee Code J include orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market. Orders with Fee Code D include orders that add displayed liquidity to the Exchange but that are not Fee Code B or J, and thus, orders with Fee Code B, D or J include all orders, other than Retail Orders, that add displayed liquidity to the Exchange.

[15] The pricing is referred to by the Exchange on the Fee Schedule under the existing description ''NBBO Setter Tier'' with a Fee Code of ''S1'' to be appended to the otherwise applicable Fee Code for qualifying executions.

[16] The Exchange notes that the remainder of alternative criteria (2) under NBBO Setter Tier 1 was implemented on June 3, 2024. *See* Securities Exchange Act Release No. 100320 (June 12, 2024), 89 FR 51576 (June 18, 2024) (SR–MEMX–2024–24). In that filing, the Exchange indicated that it would determine whether a security meets the ''priced at or above $1.00 per share'' threshold for purposes of calculating the ADAV and TCV by using the prior day's closing price. The Exchange is proposing herein, however, to clarify with a note in the Notes section on the Fee Schedule, as described above, that it will determine whether a security is ''priced at or above $1.00 per share'' by using the closing price of the security on the date of execution.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the proposed new Liquidity Provision Tier 1 is reasonable, equitable and not unfairly discriminatory for these same reasons, as it would provide Members with an additional incentive to achieve a certain volume threshold on the Exchange, is available to all Members on an equal basis, and, as noted above, is designed to encourage Members to maintain or increase their orders that add displayed liquidity to the Exchange in order to qualify for the enhanced rebate for executions of Added Displayed Volume, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange also believes the enhanced rebate for executions of Added Displayed Volume under the proposed new Liquidity Provision Tier 1 reflects a reasonable and equitable allocation of fees and rebates because it is higher than the rebates provided for such executions under Liquidity Provision Tiers 2–6, which have lower volume thresholds as their required criteria, and is commensurate with its required criteria and the market quality benefits it is designed to achieve, as described above.

The Exchange believes that Liquidity Provisions Tier 2, 3, and 4, and NBBO Setter Tier 1, each as modified by the proposed changes to the required criteria under each tier as described above, are reasonable, equitable and not unfairly discriminatory for these same reasons. Such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding, and/or NBBO-setting orders to the Exchange in order to qualify for an enhanced rebate, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes the proposed change to eliminate the DLI Additive Rebate is reasonable because, as noted above, it would enable the Exchange to redirect the associated resources and funding into other incentives and tiers, and the Exchange is not required to maintain such incentive or provide Members any opportunities to receive additive rebates. The Exchange believes the proposal to eliminate such incentive is also equitable and not unfairly discriminatory because it applies equally to all Members, in that the incentive would no longer be available for any Member.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [20] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding, and/or NBBO setting orders to the Exchange,, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed new Liquidity Provision Tier 1 and the modified Liquidity Provision Tiers 2, 3, and 4 and NBBO Setter Tier 1 and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. Additionally, as noted above, the elimination of the DLI Additive Rebate will apply to all Members equally. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16.1% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] *See supra* note 19.

equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [22] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[23] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [24] and Rule 19b–4(f)(2) [25] thereunder.

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 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–MEMX–2024–26 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–MEMX–2024–26. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–MEMX–2024–26 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15400 Filed 7–12–24; 8:45 am]

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[22] *Id.*

[23] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 240.19b–4(f)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100470; File No. SR–LCH SA–2023–007]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Liquidity Risk Modelling Framework

July 9, 2024.

I. Introduction

On December 22, 2023, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change (''Proposed Rule Change'') to amend its Liquidity Risk Modelling Framework (the ''Framework''). The Proposed Rule Change was published for comment in the **Federal Register** on January 11, 2024.[3] On February 21, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change, from February 25, 2024 to April 10, 2024.[5] On April 8, 2024, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Act,[6] to determine whether to approve or disapprove the Proposed Rule Change.[7] The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

(i) Background

LCH SA is a clearing agency that offers clearing of, among other things, credit-default swaps (''CDS'').[8] LCH SA is registered with the Commission for clearing CDS that are security-based swaps and with the Commodity Futures Trading Commission for clearing CDS that are swaps. As part of its clearing business, LCH SA maintains cash and other liquid financial resources to meet its financial obligations. The Framework and other procedures describe how LCH SA maintains these resources and manages its liquidity risk, meaning the risk that LCH SA will not have enough liquid financial resources to meet its financial obligations.[9] The Framework specifically describes how LCH SA's Collateral and Liquidity Risk Management department (''CaLRM'') assures that LCH SA has enough cash available to meet any financial obligations, both expected and unexpected, that may arise over the liquidation period for each of LCH SA's clearing services.

The Framework describes LCH SA's liquidity in terms of sources and needs. The Framework lists various sources of liquidity for LCH SA, such as cash and non-cash collateral provided by Clearing Members to meet their margin and default fund requirements. With respect to needs for liquidity, the Framework places these into three broad categories: (i) those arising from LCH SA's business-as-usual operations; (ii) those arising from Clearing Members' defaults; and (iii) those arising from the default of LCH SA's interoperating central counterparty (''CCP'').

Section 1 of the Framework describes the scope, purpose, and use of the Framework. Sections 2 and 3 describe certain limitations to, and justifications for, how LCH SA models its liquidity sources and needs. Section 4 details how LCH SA models its liquidity sources and needs. Section 5 describes how LCH SA tests and monitors the performance of these models. Finally, Section 6 contains certain additional information relevant to the Framework, presented as appendices to the Framework.

The purpose of the Proposed Rule Change is to make a variety of updates to the Framework. These updates are described below according to the section of the Framework where they appear. In general, these changes will: (a) revise the manner in which settlement obligation liquidity requirements are calculated; (b) revise the way LCH SA determines the potential value of liquidity obtained from pledging securities to the Banque de France (''BdF''); (c) extend the length of time for which LCH SA must maintain liquidity resources sufficient to meet its liquidity requirements; (d) include the liquidity needs generated by the expiration of physically settled stock futures in determining overall liquidity needs; and (e) require LCH SA, in calculating its required liquidity resources, to consider that Clearing Members may switch from depositing non-cash collateral in a Full Title Transfer Account (''FTTA'') to depositing non-cash collateral instead in a Single Pledged Account (''SPA'').

(ii) Section 1 Changes to the Framework

Section 1 of the Framework details the scope, purpose, and use of the Framework. The Proposed Rule Change would make various updates to this section, as described below.

Currently, Section 1.1, titled Model Objective, Business Scope and Intended Use, states that the Framework is owned by CaLRM and is reviewed on at least a quarterly basis. Currently, Section 1.1 provides that the Framework is reviewed at least on a quarterly basis. LCH SA is proposing to change the frequency the Framework is reviewed from quarterly to annually. LCH SA is making this change to align the review of the Framework with the frequency of the review of the Group Liquidity Risk Policy.

Section 1.1.1, titled Reminder of SA's activities, contains an overall description of LCH SA's activities as a clearing agency. Among other things, Section 1.1.1 currently explains that LCH SA maintains default funds which aim to cover the two largest losses that may exceed the losses covered by initial margins. LCH SA is proposing to revise this description slightly by deleting the phrase ''two largest,'' and noting instead that default funds are calibrated on the assumption of default of the two most exposed groups of affiliated Clearing Members (''Clearing Member Groups'').

The Proposed Rule Change would next amended Section 1.1.2, titled Investment Activities. To ensure that the Framework provides an accurate description of the Collateral and Liquidity Management (''CaLM'') Front Office team, LCH SA is clarifying the description of this team in this section. LCH SA's CaLM team manages LCH SA's investment activities, among other responsibilities, and the current Framework describes CaLM's tasks related to investment activities as liquidity management, non-cash collateral settlement in case of a Clearing Member's default, and investment management of cash margins, default funds, and other financial resources. The Proposed Rule Change would revise this description to state that CaLM's task is non-cash collateral liquidation, rather than settlement, in addition to liquidity and investment management.

Section 1.1.3, titled Interoperability of CC&G, describes the interoperability link that LCH SA maintains with another CCP, Cassa di Compensazione e

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 99277 (Jan. 5, 2024), 89 FR 1952 (Jan. 11, 2024) (File No. SR–LCH SA–2023–007) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Self-Regulatory Organizations; LCH SA; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to the Liquidity Risk Modelling Framework, Exchange Act Release No. 99569 (Feb. 21, 2024), 89 FR 14538 (Feb. 27, 2024) (File No. SR–LCH SA–2023–007).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Self-Regulatory Organizations; LCH SA; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to Liquidity Risk Modeling Framework, Exchange Act Release No. 99922 (Apr. 8, 2024), 89 FR 25906 (Apr. 12, 2024) (File No. SR–LCH SA–2023–007).

[8] Capitalized terms used but not defined herein have the meanings specified in the LCH SA Rule Book or Framework as applicable.

[9] LCH SA, a subsidiary of LCH Group and an indirect subsidiary of the London Stock Exchange Group plc (''LSEG''), manages its liquidity risk pursuant to, among other policies and procedures, the Group Liquidity Risk Policy and the Group Liquidity Plan applicable to each entity within LCH Group. In addition to its CDSClear service, LCH SA provides clearing services in connection with cash equities and derivatives listed for trading on Euronext (EquityClear), commodity derivatives listed for trading on Euronext (CommodityClear), and tri-party Repo transactions (RepoClear).

Garanzia, or ''CC&G,'' which has been renamed ''Euronext Clearing.'' The proposed rule change would reflect the renaming by replacing references to CC&G with references to Euronext Clearing, including in the title to this section.

LCH SA is also making changes to reflect the other policies and procedures, in addition to the Framework, that it employs to manage its liquidity risk. As noted above, LCH SA is a subsidiary of LCH Group and an indirect subsidiary of LSEG. As such, LCH SA manages its liquidity risk using the Group Liquidity Risk Policy and the Group Liquidity Plan (which are applicable to each entity within LCH Group). LCH SA uses these other policies in addition to the Framework. The Proposed Rule Change would update Section 1.3, titled Model dependency and interconnectivity, to include summaries of these other policies, including the LCH SA Liquidity Plan, Group Liquidity Risk Policy, Group Financial Resource Adequacy Policy, Group Collateral Risk Policy, Group Investment Risk Policy, LCH SA Collateral Control Framework, and Group Risk Policy: Default Management.

The Proposed Rule Change would next amend Section 1.4, titled Model Governance. Here the Proposed Rule Change would add a footnote to clarify that the core liquidity reserve stress tests are performed monthly according to the Liquidity Risk Policy. LCH is making this change to align the Framework with LCH SA's Liquidity Risk Policy.

Section 1.6.1, titled Liquidity Sources, describes LCH SA's sources of liquidity. These sources include, among others, cash posted by Clearing Members to meet margin and default fund requirements and non-cash collateral posted by Clearing Members. Section 1.6.1 also describes the tools that CaLM would use to meet LCH SA's non-Euro liquidity requirements in case of a Clearing Member's default. Section 1.6.1 currently describes these tools as committed liquidity lines pledged with assets from margin collateral or investments and a rule book arrangement that allows LCH SA to pay its obligations in Euros. The Proposed Rule Change would add further explanation of the tools available to CaLM to meet LCH SA's non-Euro liquidity requirements in the event of a default. At a broad level, these tools include non-Euro cash deposited as collateral at creditworthy commercial banks; the sale of non-Euro securities of the defaulting member; repo transactions; the use of LCH SA's multicurrency overdraft facility; the use of FX spot market transactions; ECB weekly tender in U.S. dollars; and the replacement of LCH SA's liabilities in non-Euro by Euro. This description would be the same as what is currently found in Appendix 5 of the Framework.[10]

The Proposed Rule Change next would make two changes in Section 1.6.1.1, titled Collateral transfer to the 3G pool, which is related to non-cash collateral posted by Clearing Members. LCH SA permits Clearing Members to deposit non-cash collateral either through a FTTA or through a SPA. LCH SA maintains FTTAs at various central securities depositories and maintains SPAs at Euroclear Bank and Bank of New York Mellon (for U.S. Treasuries). As currently described in Section 1.6.1.1, LCH SA can pledge certain of this non-cash collateral—mostly Euro-denominated securities, referred to herein as ''Eligible Collateral''—at BdF to obtain a liquidity line on an intraday basis and overnight if needed. Securities denominated in other, non-Euro currencies are generally not considered Eligible Collateral under the Framework,[11] and LCH SA can only pledge Eligible Collateral that is deposited through a FTTA. LCH SA cannot pledge securities that a Clearing Member deposits via a SPA, regardless of whether they are Eligible Collateral. Section 1.6.1.1 currently states that all non-cash collateral received is deposited via FTTA by LCH SA in various CSDs, except where collateral is deposited via SPA. The Proposed Rule Change would revise this description to clarify that Clearing Members can deposit either via FTTA or SPA, thus better reflecting Clearing Members' ability to choose between the two accounts. Second, the Proposed Rule Change would add a note to explain that there are limits to the amount of pledge collateral that can be deposited for LCH SA's RepoClear, EGC Plus, and EquityClear business lines, and a note to explain that Clearing Members deposit most of their collateral via FTTAs.

Section 1.6.1.2, titled Assessment of Assets Liquidity, describes how LCH SA categorizes its collateral in terms of how liquid that collateral is. LCH SA assigns collateral to a liquidity tiering scale, ranging from 1 to 3. Tier 1 assets are the most liquid and Tier 3 are the least liquid. Currently, Section 1.6.1.2 contains a table that lists out collateral by tier. This table includes, as Tier 1 assets, all Eligible Collateral, UK Gilts and US Treasury Bills, and Dutch and Belgian central bank guarantees (only for the defaulting member that posted the guarantee). The Proposed Rule Change would add to this table, as Tier 3 assets, non-cash collateral denominated in Danish Krone, Norwegian Krone, Swedish Krona, Japanese Yen, Swiss Franc, Canadian Dollar, and Australian Dollar. As noted, such collateral is not Eligible Collateral. The Proposed Rule Change also would note, elsewhere in Section 1.6.1.2, that Tier 1 Assets include Gilt US securities and the central bank guarantee of the defaulter if the member is based in the same country as the central bank providing the guarantee. This additional language would be consistent with what is currently found in the table regarding Tier 1 assets.

Section 1.6.1.3, titled Synthesis, contains a table that synthesizes information about LCH SA's various liquidity sources. This table categorizes each source as cash, non-cash collateral from Clearing Members, collateral from investment activities, and other. In this table the Proposed Rule Change would replace references to CC&G with references to Euronext Clearing, to reflect the name change noted above. Currently, this table also explains that LCH SA retains the right of collateral re-hypothecation for all Eligible Collateral, but not for collateral deposited under the pledge regime and CDS. The Proposed Rule Change would remove the reference specific to CDS. Because pledge is now available at LCH SA's CDS service, the disclaimer for pledge also applies to CDS, and therefore the CDS business line does not need to be mentioned separately.

In addition, the table currently notes that LCH SA has demonstrated an ability to raise Euro cash using non-Euro, non-cash collateral, based on exercises performed in 2017. The Proposed Rule Change would clarify that CaLM demonstrated in 2021 and 2022 the ability to raise Euro liquidity from non-Euro non-cash collateral in USD and GBP. The table currently notes that when valuing non-Euro non-cash collateral as a liquidity source, LCH SA applies an arbitrary buffer of ten percent as a haircut. The Proposed Rule Change also would revise the description of this buffer from ''arbitrary'' to ''conservative'' and would note it is applied to absorb market stress that may occur beyond the volatility already captured by the all-in haircut.

Finally, the table currently identifies as a source of liquidity guarantee letters

[10] The Proposed Rule Change would not amend this description as currently found in Appendix 5.

[11] For example, the Framework notes that Gilts, US Treasuries, and securities denominated in Danish Krone, Norwegian Krone, Swedish Krona, Japanese Yen, Swiss Franc, Canadian Dollar, and Australian Dollar are not eligible for pledge at BdF.

from central banks, but only for Belgian and Dutch clearing members. The Proposed Rule Change would confirm that these guarantees can be considered for liquidity purposes only if the relevant Clearing Member posting them is in default, because only in this specific situation would LCH SA acquire full ownership of the guarantee provided by the central bank.

Section 1.6.2, titled Liquidity Needs, describes LCH SA's liquidity needs. As noted, the Framework identifies three broad categories of liquidity needs: (i) those arising from LCH SA's business-as-usual operations; (ii) those arising from Clearing Members' defaults; and (iii) those arising from the default of LCH SA's interoperating CCP.

Section 1.6.2.1, titled Liquidity needs arising from members' defaults, further identifies liquidity needs arising from Clearing Member defaults. These needs include, among others, settlement cash outflows and the value of Eligible Collateral pledged at BdF. With respect to settlement cash outflows, Section 1.6.2.1 provides that cash outflows are generated when LCH SA must step in on behalf of the defaulted member to post cash to non-defaulting member(s) and take in the underlying collateral. The Proposed Rule Change would revise this description, from ''underlying collateral'' to ''underlying securities.'' Section 1.6.2.1 specifies that LCH SA obtains liquidity based on the value of the Eligible Collateral that it pledges. Given that a Clearing Member's default likely would result in (or result from) stress market conditions, and given that such conditions could lower the value of Eligible Collateral, the Proposed Rule Change would specify that LCH SA would consider stress market conditions in determining the value of Eligible Collateral pledged.

Finally, Section 1.6.2.2, titled Liquidity needs arising from interoperating CCPs' defaults, identifies the liquidity needs arising from the default of LCH SA's interoperating CCP. In Section 1.6.2.2, the Proposed Rule Change would replace references to CC&G with references to Euronext Clearing, consistent with the name change noted above.

(iii) Section 2 and Section 3

Section 2, titled Limitations and Compensating Controls, and Section 3, titled Justification of Modelling Approach, describe certain limitations to, and justifications for, how LCH SA models its liquidity sources and needs. The Proposed Rule Change would not make any amendments to Sections 2 and 3.

(iv) Section 4 Changes to the Framework

Section 4, titled Model Specification, explains how LCH SA models its liquidity sources and needs. Section 4 is organized according to LCH SA's three broad categories of liquidity needs: (i) those arising from LCH SA's business-as-usual operations; (ii) those arising from Clearing Members' defaults; and (iii) those arising from the default of LCH SA's interoperating CCP.

Operational Liquidity Needs

Section 4.1, titled Operational Target, describes how LCH SA determines its liquidity needs arising from business-as-usual operations. LCH SA values its operational liquidity needs by determining the amount of its sources of liquidity from its operations and the amount of its requirements for liquidity from its operations. LCH SA then subtracts the total of its requirements from the total of its sources, to determine whether it has sufficient resources to meet its requirements. As described in Section 4.1.3, titled Model Outputs, LCH SA's CaLRM team generates reports daily to check that operational liquidity sources are sufficient to cover operational liquidity requirements.

The Proposed Rule Change would first amend Section 4.1.2, titled Model Inputs and Variable Selection, to clarify that the repayment of excess cash as well as excess ECB eligible securities deposited to cover margin requirements are considered in the liquidity requirements of the Operational Target. Operational liquidity requirements currently include, among other items, repayment of excess cash collateral, which is cash that Clearing Members provided to meet their margin and default fund requirements, but that is no longer needed to meet such requirements. This could occur, for example, when a Clearing Member's margin and default fund requirements decrease due to a change in the Clearing Member's positions or risk associated with those positions, and Clearing Members request the return of such excess cash collateral. Like excess cash, Clearing Members may request the return of Eligible Collateral that is no longer needed to meet margin and default fund requirements. Because LCH SA considers Eligible Collateral as a potential source of liquidity, the return of Eligible Collateral represents a potential liquidity requirement for LCH SA. Accordingly, the Proposed Rule Change would note that the return of excess Eligible Collateral represents a potential liquidity requirement.

The Proposed Rule Change also would update a related footnote, which explains that LCH SA excludes certain securities from its liquidity assets, and therefore, LCH SA does not consider these securities as potential excess Eligible Collateral. These include securities denominated in Danish Krone, Norwegian Krone, Swedish Krona, Japanese Yen, Swiss Franc, Canadian Dollar, and Australian Dollar. These securities are not Eligible Collateral because LCH SA is not able to pledge them for a liquidity line. Here the Proposed Rule Change would specify that Portuguese and Finnish government bonds posted via the triparty solution are excluded from the liquid assets because LCH SA cannot pledge these securities at BdF due to operational constraints.

The Proposed Rule Change would next amend Section, 4.1.4, titled Mathematical Formula, Derivation and Algorithm, and Numerical Approximation. This section explains the mathematical formula LCH SA uses to confirm that its sources of operational liquidity are sufficient to meet its needs. As noted, LCH SA determines the total of its sources and the total of its operational liquidity requirements and then subtracts the total of its requirements from the total of its sources. LCH SA refers to the resulting figure as its ''Operational Target.'' The Proposed Rule Change would not alter this formula, but it would add language to note that, after subtracting operational liquidity requirements from liquidity resources, the remaining amount must always be greater than zero.

The Proposed Rule Change would next amend Section 4.1.5, titled Model Assumptions, 4.1.5, which details how LCH SA determines the amounts of its operational liquidity resources and needs, and the period for which LCH SA seeks to maintain sufficient liquidity resources. Currently, LCH SA seeks to maintain sufficient liquidity sources for five days in stressed situations. The Proposed Rule Change would revise this time horizon to provide that liquidity resources must be sufficient to meet LCH SA's liquidity requirements for seven days in stressed situations. Additionally, details related to the management of the former horizon have been removed to state that the horizon is seven days and results will be displayed without any aggregation. LCH SA is making this change to ensure that the time horizon is the same for all business lines. Specifically, this change would make the time horizon for LCH SA's business lines consistent with the time horizon for its RepoClear business

line, which uses a seven-day period for considering the sufficiency of its liquidity sources.

Section 4 contains descriptions of the various components of LCH SA's operational liquidity requirements, which the Framework calls ''liquidity requirements drivers.'' One of these drivers is the potential requirement to repay excess collateral. As noted, excess cash collateral is a potential liquidity need because Clearing Members may request the return of such excess cash collateral. The Proposed Rule Change would add a description of the return of excess Eligible Collateral as a related liquidity need.[12] The Proposed Rule Change also would update a reference to the period for which LCH SA seeks to maintain sufficient liquidity sources. As with the change described above, the Proposed Rule Change would extend this period from five to seven days. Specifically, the assumptions that the two largest individual Clearing Members will withdraw their excess on day one (T) and that the third and fourth largest Clearing Members will withdraw their excess on day two (T+1) will be revised to clarify that (a) the two Clearing Member Groups that have the largest amount of excess collateral will withdraw their excess on T, and (b) the third and fourth Clearing Member Groups that have the next largest amount of excess collateral will withdraw their excess on T+1. In each case, LCH SA would assume the remaining Clearing Members will withdraw their excess on the third day (T+2).

Another liquidity driver is the operational liquidity need created when Clearing Members switch cash collateral with non-cash collateral, or switch Eligible Collateral with other non-cash collateral. LCH SA currently considers the impact of such switches over five days. Under the Proposed Rule Change, LCH SA would consider the switches over seven days rather than five, consistent with the changes described above. To facilitate this change, the Proposed Rule Change would add two additional definitions for the amounts of such switches, corresponding to T+5 and T+6.

This section also currently explains that with respect to switches from cash to Eligible Collateral, LCH SA assumes that it can pledge the Eligible Collateral within the same day. The Proposed Rule Change would clarify that, to confirm this assumption, in quarter 3 of 2022, the CaLM demonstrated the ability to transfer Eligible Collateral to BdF within 30 minutes. The Framework currently lists the countries for whose securities CaLM demonstrated this ability, in other words, the countries whose sovereign securities are Eligible Collateral. The Proposed Rule Change would remove this list from the Framework because it is subject to change and depends on the collateral that LCH SA itself accepts from Clearing Members. This section also notes that, with respect to the amount of equity lodged, LCH SA takes the maximum amount of switch observed (currently 100 million Euro) and that this assumption is very conservative because the amount of equities lodged over the past 3 years did not exceed 400,000 Euro. The Proposed Rule Change would keep this sentence but delete the reference to the actual amounts (100 million and 400,000 Euro) because, as LCH SA takes the maximum amount of switched observed, both figures are subject to change.

Another liquidity driver is the need created when LCH SA must provide liquidity to facilitate settlement, including fails resulting from delays in posting securities by Clearing Members. Currently, LCH SA determines the amount of this liquidity need based on the historical amount of EOD securities carried overnight, using a two-year lookback period. LCH SA is also making changes that will clarify the specific amount that is calibrated will be determined using the maximum EOD securities carried overnight over the whole time series available, rather than just a two-year lookback period. The Proposed Rule Change would delete the reference to the two-year lookback period and instead note that the estimate is based on the entire time series that is available to LCH SA.

Another liquidity driver is the need created when Clearing Members' stressed margin requirements decrease. If a Clearing Member's margin requirement goes down, then the Clearing Member may request the return of collateral that it provided to cover that requirement, and therefore a reduction in margin could generate a liquidity need for LCH SA. The Proposed Rule Change would modify the targeted estimated margin reduction of non-defaulting Clearing Members to be consistent with the changes described above. Specifically, the estimated margin reduction will be calculated over seven consecutive days rather than the current three days. To reflect this change, a detailed table and related clarifying footnotes that describe the margin reduction rate per day of the horizon period would be added to the Framework.

The liquidity need generated by LCH SA paying variation margin to its interoperable CCP is also a driver of operational liquidity. As with the changes discussed above, the Proposed Rule Change would replace references to CC&G in this section with references to Euronext Clearing. The Proposed Rule Change also would clarify that LCH SA estimates the variation margin payment based on the Initial Margin posted at LCH SA to cover a 5-day holding period to be spread out over a 5-day period according to a simulated market stress based on historical yield shifts.

Finally, the Proposed Rule Change would make a minor amendment to Section 4.1.5.i, titled Model assumptions, Planned Default Fund (DF) reductions, which discusses how a decrease in the default fund would affect LCH SA's operational liquidity needs. The Proposed Rule Change would clarify that default fund is abbreviated as ''DF'' in the discussion accompanying Section 4.1.5.i.

Default Liquidity Needs

Section 4.2 of the Framework, titled LCR, describes how LCH SA determines its liquidity needs arising from the default of a Clearing Member. As described, LCH SA must ensure that it has enough liquidity to satisfy a ''Cover 2'' requirement, meaning default of the two largest Clearing Member Groups at the same time.

This section details the sources of liquidity and needs for liquidity that would arise in the event of a Clearing Member's default. The Framework refers to these liquidity sources as ''Total Available Assets'' and liquidity needs as ''Total Default Liabilities.'' To determine how well it is covering its liquidity needs arising from the potential default of a Clearing Member, LCH SA divides its Total Available Assets by its Total Default Liabilities. LCH SA refers to the resulting figure as its ''Liquidity Coverage Ratio'' or ''LCR.'' LCH SA calculates, monitors, and reviews the LCR daily.

The Proposed Rule Change would revise this section to provide that the purpose of the LCR Cover 2 scenario is to allow LCH SA to ensure that it has enough liquidity in the case of default of the two largest Clearing Member Groups during the seven days following the default, rather than five days, as is currently provided. This change would be consistent with the other changes noted above, extending the time horizon for maintaining liquidity resources from five to seven days.

[12] Similar to the change described above, the Proposed Rule Change also would specify that Portuguese and Finnish government bonds posted via the triparty solution are excluded from the liquid assets because LCH SA cannot pledge these securities at BdF due to operational constraints.

Model Inputs and Variable Selection

With respect to the components that make up the LCR, Section 4.2.2, titled Model Inputs and Variable Selection, identifies four categories of Total Available Assets: (i) margin collateral; (ii) cash in the default fund; (iii) Eligible Collateral that LCH SA has pledged; and (iv) liquidity raised from investment activities. With respect to Total Default Liabilities, Section 4.2.2 identifies four categories: (i) the operational liquidity needs discussed above, which will continue during the default of a Clearing Member; (ii) contractual settlements related to LCH SA's RepoClear, EGCPlus, and EquityClear business lines; (iii) the cost of financing those contractual settlements; and (iv) variation margin paid to non-defaulting Clearing Members.

The Proposed Rule Change would add to Section 4.2.2 language regarding the treatment of assets belonging to clients of FCM/BD Clearing Members. As reflected currently in the Framework, LCH SA segregates margin provided by FCM/BD Clearing Members on behalf of their clients. This means that LCH SA can only use a particular Clearing Member's client's margin to cover a shortfall arising from that particular client's default, and not to cover a shortfall arising from a Clearing Member's default or another client's default. The Proposed Rule Change would add language to further clarify LCH SA's treatment of margin provided by FCM/BD Clearing Members on behalf of their clients. This new language would specify that, in the context of default and monitoring of the LCR, LCH SA treats a specific FCM/BD Clearing Member's client's collateral as an available liquidity resource only if the specific client defaults and generates a liquidity need. Otherwise, LCH SA does not treat a specific FCM/BD client's resources as available liquidity assets for any other FCM/BD client, the client's FCM/BD Clearing Member, or any other Clearing Member.

The Proposed Rule Change also would make an amendment regarding LCH SA's Total Available Assets. As noted above, the Framework identifies four categories of Total Available Assets. The Proposed Rule Change would amend the description of the third category, Eligible Collateral pledged at BdF. Currently, Section 4.2.2 describes this as the amount of liquidity that can be provided by BdF when pledging securities and including the haircut effect on the resulting figures. The Proposed Rule Change would revise this description to explain that LCH SA would be pledging the securities at stressed market prices.[13] As noted above, LCH SA may pledge Eligible Collateral to obtain a liquidity line. LCH SA therefore treats this Eligible Collateral as a source of liquidity, the amount of which is based on the value of the collateral at the time of the pledge, minus an applicable haircut. The Proposed Rule Change would therefore amend the Framework to ensure that LCH SA considers the potential stress market conditions (which could decrease the value of the collateral), as well as the applicable haircut, when valuing Eligible Collateral as part of its liquidity resources.

The Proposed Rule Change would make an amendment regarding LCH SA's Total Default Liabilities. As noted above, the Framework identifies four categories of Total Default Liabilities. The Proposed Rule Change would amend the description of the fourth category, the cost of paying variation margin to non-defaulting Clearing Members. The Framework currently describes this liability as the stressed variation margin impact for cash, derivatives, and CDS markets, on top of which is added the market stress risk impact on the contractual settlements for RepoClear. The Proposed Rule Change would describe this instead as the stressed variation margin impact for cash, derivatives, RepoClear, EGC, and CDS markets and would delete the phrase ''on top of which is added the market stress risk impact on the contractual settlements for RepoClear.'' Thus, under the Proposed Rule Change, LCH SA would consider as a liability the general stressed variation margin impact for RepoClear but not include the specific market stress risk impact on the contractual settlements for RepoClear. LCH SA is excluding this component because it will instead treat the market stress risk impact as a decrease in the value of liquidity obtained from pledging Eligible Collateral at BdF. As noted above, under the Proposed Rule Change, LCH SA would use stressed market prices to determine the amount of liquidity that it could obtain from pledging Eligible Collateral at BdF

[13] The proposed rule change would make the same change to Section 4.2.4, which describes the mathematical formula that LCH SA uses to calculate its total available assets. The proposed rule change also would make a similar change to Appendix 4, which presents a synthesis of LCH SA's liquidity reports. Here the proposed rule change would note that LCH SA would consider stressed market prices and the haircut when pledging securities.

Mathematical Formula Derivation and Algorithm and Numerical Approximation

The Proposed Rule Change next would amend Section 4.2.4, titled Mathematical Formula Derivation and Algorithm and Numerical Approximation, which describes the mathematical formula that LCH SA uses to calculate its LCR. The Proposed Rule Change would make conforming revisions to the description of the mathematical formula in Section 4.2.4 to carry through the changes from elsewhere in the Framework described herein. For example, the description of the mathematical formula would be revised to clarify that securities pledged at the BdF and included among Total Available Assets will be valued at stressed market prices and will include the ECB haircut effect on the resulting figures, to incorporate the revisions discussed above in Section 4.2.2. Similarly, the Proposed Rule Change would revise the description of the mathematical formula in Section 4.2.4 to incorporate the clarification of LCH SA's treatment of margins provided by FCM/BD Clearing Members on behalf of their clients discussed above. Specifically, the description of the mathematical formula would be revised to clarify that, in the event of default by a specific FCM/BD Clearing Member's client (and for the purpose of LCR monitoring), LCH SA would treat that FCM/BD Clearing Member's client's collateral as available liquidity resources only if that specific FCM/BD client defaults and generates a liquidity need. Consistent with the changes discussed above, the description would also be revised to clarify that LCH SA would not consider these resources as available liquidity assets for any other FCM/BD clients, the FCM/BD Clearing Member, or any other Clearing Member.

Model Assumptions

Section 4.2.5, titled Model Assumptions, describes the various risks and assumptions that LCH SA considers when calculating the LCR. Section 4.2.5 describes these assumptions per LCH SA business line, beginning with LCH SA's RepoClear business. To clarify that LCH SA must consider certain risks for each business line in determining liquidity requirements, the Proposed Rule Change would change the title of section 4.2.5.1 to ''Description of risks per Business Line.''

RepoClear

Section 4.2.5.1.1, titled RepoClear, describes the liquidity needs associated

with RepoClear. Section 4.2.5.1.1 currently includes a table summarizing the liquidity requirements according to the direction of the repo transactions. The Proposed Rule Change would delete this summary table and a related paragraph describing the specific treatment of forward starting repo in the calculation of the settlement obligation outflows. The Framework would replace the table with new Sections 4.2.5.1.1.1 and 4.2.4.1.1.2 (discussed below).

Also in Section 4.2.5.1.1, the Proposed Rule Change would amend the period for which LCH SA considers the cash needs associated with purchasing securities on behalf of a defaulting RepoClear clearing member. Currently, LCH SA calculates this liquidity need, which the Framework calls ''settlement cash outflows,'' over a five-day time horizon. The Proposed Rule Change would extend this to seven days, consistent with the changes discussed above. This change also would align this monitoring period to the RepoClear new maximum holding period to manage a default (five days holding period of margin plus two days of settlement convention).

The Proposed Rule Change also would amend Section 4.2.5.1.1 to clarify that LCH SA will not offset the liquidity needs arising from the defaults of related Clearing Members. As noted above, LCH SA's Clearing Members may be part of an affiliated Clearing Member Group. As described in Section 4.2.5.1.1, LCH SA calculates these settlement outflows on a gross basis for each Clearing Member. For those Clearing Members that are part of a Clearing Member Group, LCH SA aggregates the gross outflows for each Clearing Member in that group. To facilitate the prohibition of netting between entities of the same group, the Proposed Rule Change would clarify that settlement cash outflows will be calculated over a period of 7 days and on a gross basis, aggregated by ISIN, settlement date, and Clearing Member level. LCH SA would then aggregate the final settlement outflows at the Clearing Member Group level without allowing any netting across members of the same Clearing Member Group.

The Proposed Rule Change would add a new Section 4.2.5.1.1.1, titled Liabilities Contractual Obligations on Physical Delivery. This section would describe how LCH SA would estimate the liquidity needs associated with the physical settlement of transactions on behalf of a defaulting Clearing Member. In the case of default, LCH SA will assume and honor the obligations of the defaulted Members. In the event of securities with physical settlement, LCH SA might need to source securities to complete a defaulting Clearing Member's transaction, which could represent a substantial liquidity need for LCH SA. This section would describe the way LCH SA would navigate this scenario, and would describe how LCH SA's pledge of Eligible Collateral to obtain liquidity would affect its ability to source securities to settle transactions.

The Proposed Rule Change also would add a new Section 4.2.5.1.1.2, titled Assets: Settlement Securities Pledged at Central Bank. This new section would describe how LCH SA would estimate the value of liquidity it could raise through pledging settlement securities withdrawn from the settlement system on behalf of a defaulting Clearing Member. This new section would describe in detail how LCH SA would determine the value of the liquidity it could raise, including the relevant mathematical formulas and assumptions. As would be described, LCH SA would consider the potential reduction in market price of the securities during unfavorable market conditions. In other words, LCH SA would consider the stressed market prices of the securities, in line with similar changes described above. LCH SA would also consider the haircut that BdF would apply when lending cash to LCH SA in exchange for the securities. Finally, to remain consistent with the calculation of settlement obligations, as described in this section, after calculating the Liquidity retrieved from the BdF for all dates in the LCR period at Member level, the amounts are aggregated at the Clearing Member Group level.

The Proposed Rule Change would revise Section 4.2.5.1.1.3 (renumbered from 4.2.5.1.1.1), titled Market Risk. This section describes the liquidity need generated by the requirement that LCH SA pay variation margin to non-defaulting Clearing Members on behalf of the defaulting Clearing Member. The Proposed Rule Change would clarify that, in addition to the liquidity flows driven by settlement obligations, the position of the defaulter may generate a liquidity drain for LCH SA in the form of negative mark-to-market to be paid to non-defaulting members. The Proposed Rule Change also would revise the formula that LCH SA uses to estimate the value of this liquidity need. Under the Proposed Rule Change, LCH SA would consider the worst stress loss of the defaulter position according to the relevant RepoClear stress test scenario and add additional margin to model any concentration or market liquidity issues. The Proposed Rule Change further would add a footnote to explain that Appendix 6.7 to the Framework contains a list of stress scenarios.

EGCPlus

Dection 4.2.5.1.2, titled EGCPlus, describes the liquidity needs arising from EGCPlus. These liquidity needs could arise from the securities purchased on behalf of a defaulting Clearing Member. LCH SA aggregates these needs by ISIN of the securities and maturity of the contracts. The Proposed Rule Change would revise this section to clarify that, when calculating the settlement-driven cash outflows, the aggregation is based on data provided by the triparty agent and that a liquidity need is generated only by positions in which the defaulter is a cash borrower in the first leg of the repo and the collateral taker when the repo closes. The Proposed Rule Change would further add a footnote that would explain which positions generate a liquidity upon a default. Specifically, a liquidity need is generated by those positions in which the defaulting Clearing Member is a cash borrower (collateral giver) in the first leg of the repo and, therefore, the collateral taker when the repo closes.

To incorporate a recommendation from LCH SA's Model Validation Team to improve the liquidity needs estimation related to Market Risk in the LCR, the Proposed Rule Change also would clarify that, for EGCPlus, the additional liquidity needs generated by negative mark to market payments to non-defaulting Clearing Members is estimated in line with what is done for RepoClear. As noted above, this means LCH SA would consider the worst stress loss of the defaulter position according to the relevant stress test scenario and add any additional margin to model any concentration or market liquidity issues.

EquityClear

Section 4.2.5.1.3, titled EquityClear, describes the liquidity needs arising from EquityClear. In this section, the Proposed Rule Change would incorporate amendments made elsewhere to the Framework. For example, the Proposed Rule Change would update Section 4.2.5.1.3 to clarify that the settlement cash outflows will be calculated on a gross basis at the Clearing Member level and then aggregated at the Clearing Member Group level without allowing any netting across the Clearing Members of the same Clearing Member Group. Doing so would help to ensure that there is no netting across Clearing Members in the same Group, the same as the amendments discussed above. Further,

when determining the liquidity need generated by the requirement that LCH SA pay variation margin to non-defaulting Clearing Members on behalf of the defaulting Clearing Member, under the Proposed Rule Change LCH SA would consider the worst stress loss of the defaulter position according to the relevant stress test scenario.

To address a recommendation from LCH SA's Model Validation Team, the Proposed Rule Change would add the liquidity needs related to the expiry of physically delivered single stock futures in the LCR. Where the defaulting Clearing Member holds a long futures position which expires during the LCR horizon, LCH SA will have to pay the future price to the non-defaulting counterparty in order to settle the physical underlying. Therefore, LCH SA would consider this as a potential additional liquidity need.

Listed Derivatives

Section 4.2.5.1.3.2, titled Listed Derivatives, describes the liquidity needs arising from LCH SA's listed derivatives business line. Here the Proposed Rule Change would clarify that futures on equity index contracts are included among the listed derivatives instruments considered in the calculation of the LCR and that derivatives expirations occur on a monthly basis rather than the previously stated quarterly basis. Moreover, when determining the liquidity need generated by the requirement that LCH SA pay variation margin to non-defaulting Clearing Members on behalf of the defaulting Clearing Member, under the Proposed Rule Change LCH SA would consider the worst stress loss of the defaulter position according to the relevant stress test scenario, consistent with changes elsewhere in the Framework.

CDSClear

Section 4.2.5.1.4, titled Credit Default Swaps, describes the liquidity needs arising from LCH SA's CDSClear business line. Here the Proposed Rule Change would clarify that the calculation of the liquidity needs generated by negative mark-to-market payments to be made to non-defaulting members is charged in line with what is done for the other LCH SA services. Specifically, LCH SA will calculate this need as the worst stress loss of the defaulter position according to the relevant stress test scenario. The Proposed Rule Change further would add a footnote to explain that Appendix 6.7 to the Framework contains a list of stress scenarios.

Additional Components of LCR, Section 4.2.5.2

Section 4.2.5.2 of the Framework, titled Other Liquidity Requirements, describes certain other components that LCH SA considers as part of the LCR.

For example, LCH SA includes the liquidity requirement arising from the operational target as a liquidity need in calculating the LCR. LCH SA does so with two modifications. First, LCH SA removes the cost of paying variation margin to its interoperable CCP. LCH SA makes this modification because it assumes that where its two largest Clearing Member Groups have defaulted, LCH SA would be collecting variation margin from its interoperable CCP rather than paying out variation margin. Second, LCH SA removes the impact of a margin reduction for defaulting Clearing Members. As discussed above, LCH SA considers the liquidity need created when Clearing Members' margin requirements decrease. If a Clearing Member's margin requirement goes down, then the Clearing Member may request the return of collateral that it provided to cover that requirement, and therefore a reduction in margin generates a liquidity need for LCH SA. The same is true when a Clearing Member requests the return of excess cash collateral. For the sake of accounting for the operational target in the LCR, LCH SA excludes this component with respect to the two Clearing Member Groups that are assumed to be in default. LCH SA does this because, where a Clearing Member is in default, LCH SA has the right to use the collateral of the defaulting Clearing Member, including any excess collateral. LCH SA is already reducing the impact of these two components of the operational target in the current version of the Framework, and the Proposed Rule Change would make clarifying edits to the description of these components.

LCH SA includes margin collateral in its available assets when calculating the LCR. LCH SA does this because, as discussed, LCH SA can obtain liquidity for margin collateral, by pledging Eligible Collateral and otherwise engaging in investment transactions. In doing so, LCH SA considers potential losses to the market value of non-cash collateral because such losses could decrease the amount of liquidity that LCH SA is able to obtain. The Proposed Rule Change would clarify that LCH SA would consider these potential losses by applying the same set of stress scenarios used by LCH SA in the calibration of the default fund for its RepoClear service, and choosing the one that generates the biggest liquidity exposure in terms of Cover 2.

As part of the LCR, LCH SA also considers potential losses related to investment activities involving a defaulting Clearing Member's non-cash collateral. LCH SA does so because it may use the proceeds of its investment activities as a liquidity resource when a Clearing Member defaults, and losses would decrease the amount of these proceeds. The Proposed Rule Change would clarify that LCH SA would consider these potential losses by applying the same set of stress scenarios used by LCH SA in the calibration of the default fund for its RepoClear service, and choosing the one that generates the biggest liquidity exposure in terms of Cover 2.

The Proposed Rule Change would add a new Section 4.2.5.2.4, titled Collateral Pledge modelling. This new section would describe, in detail, how pledged collateral is modelled when calculating the LCR. As noted, LCH SA may pledge Eligible Collateral deposited via FTTA to obtain a liquidity line, but not collateral deposited via SPA. If Clearing Members switch from depositing Eligible Collateral via FTTA to SPA, that could reduce the amount of liquidity that LCH SA is able to obtain. To account for this, LCH SA would assume that Clearing Members with an active SPA would pledge collateral near the maximum allowed on each LCH SA business line. LCH SA would therefore subtract this amount of Eligible Collateral from its liquidity resources. LCH SA will calculate the expected additional pledge as the difference between the maximum pledge allowed on the business line scaled by a parameter to capture Clearing Member's expected use of pledge and the actual pledge used by Clearing Members. Currently, LCH SA would assume that each Clearing Member with an active SPA would pledge 100% of the securities that it is allowed to pledge.

For Clearing Members without an active SPA, LCH SA would include all Eligible Collateral deposited via FTTA in its liquidity resources. As noted, certain securities, like those denominated in Danish Krone, Norwegian Krone, Swedish Krona, Japanese Yen, Swiss Franc, Canadian Dollar, and Australian Dollar are not considered Eligible Collateral. LCH SA would therefore exclude these securities from its liquidity resources. The Proposed Rule Change would add a notation to that effect in Section 4.2.5.2.4.

Market Risk Stress Scenario Selection, Section 4.2.5.3

Section 4.2.5.3, titled Stress scenario selection, describes the scenarios that LCH SA uses to factor the effect on market values that could occur in a stressed environment, including a Cover 2 default. Such a situation could, for example, lead to a decrease in the value of the defaulting Clearing Members' non-cash collateral and/or require that LCH SA pay variation margin on behalf of the defaulting Clearing Members. Thus, such a scenario would impact LCH SA's liquidity, both in terms of the amount of liquidity it is able to obtain from non-cash collateral, and the amount of liquidity it may need to pay out in the form of variation margin.

As described, LCH SA uses separate scenarios for each of its clearing services, taken from the set of scenarios used to calibrate the amount of Default Fund for the different services. The Proposed Rule Change would clarify that the stress test scenarios selected for each LCH SA service would be consistent with a market state resulting from Cover 2 default as assumed by the LCR. Moreover, the Proposed Rule Change would update the list of scenarios to include only those most relevant given the LCR assumptions.

Section 4.2.5.3 also contains a table describing the haircuts that would be applied when LCH SA pledges Eligible Collateral. These haircuts reduce the value of collateral that LCH SA can pledge, and therefore ultimately reduce the amount of liquidity that LCH SA is able to obtain. The Proposed Rule Change would update this table to reflect the current haircuts.

Cover 2 Selection, Section 4.2.5.4

Section 4.2.5.4, titled Cover 2 selection, describes how LCH SA calculates the liquidity requirements for each Clearing Member in a stressed environment, which it then uses to determine its Cover 2 requirement by Clearing Member Group (*i.e.,* the two largest liquidity exposures).

The Proposed Rule Change will revise this section to specify that LCH SA will determine its Cover 2 requirement in the following manner: LCH SA will first calculate certain liquidity requirements for each individual Clearing Member and then aggregate these amounts per each Clearing Member Group, to arrive at a total requirement for each Clearing Member Group. The Cover 2 requirement would be the two largest amounts per Clearing Member Group.

As would be described in revised Section 4.2.5.4, LCH SA first would calculate the following requirements for each Clearing Member, before determining the aggregate liquidity requirement per Clearing Member Group:

- Stress Variation Margin—for all the services, these variation margins would be modelled by applying the most punitive scenario among the chosen sets and consistent with the LCR assumptions;
- Settlement liquidity requirements due to RepoClear and Cash equity settlement obligations—LCH SA would value securities pledged according to the scenario that would generate the highest loss;
- Non-cash Collateral stress losses—LCH SA would estimate these losses by stressing the Eligible Collateral with the set of scenarios consistent with the LCR assumptions;
- Investment stress losses over haircut—LCH SA would estimate these losses by applying the stress scenarios to the collateral received from the reverse repo activity with each specific counterparty; and
- ECB Haircut—LCH SA would determine the impact by applying the relevant haircut to all the Eligible Collateral received from a specific clearing member.

LCH SA would use the scenarios relevant to each of its clearing services to determine these requirements and then select the scenario that generates the maximum loss of the sum of all of the above elements for the two most exposed Clearing Member Groups. As noted, this sum would determine LCH SA's Cover 2 requirement for purposes of determining its LCR.

LCR for Euronext

Section 4.3 of the Framework, titled LCR Euronext Clearing, describes how LCH SA calculates the liquidity impact resulting from the potential default of its interoperable CCP. Throughout this section, the Proposed Rule Change would change the name of the interoperable CCP from CC&G to Euronext Clearing, including in the titke. The Proposed Rule Change also would update the time horizon for which LCH SA would consider this potential liquidity impact from five to seven days. These changes would be consistent with the changes made in other sections of the Framework, as described above.

(v) Section 5 Changes to the Framework

Section 5 of the Framework, titled Model Performance Testing and Ongoing Monitoring, describes how LCH SA monitors and tests its liquidity sources and requirements. Section 5.1, titled Ongoing Monitoring, describes the metrics that LCH SA calculates each day, notes the formula used to determine each metric, how LCH SA reports that metric, the limit associated with the metric, and what action LCH SA would take if the limit is breached. For example, Section 5.1 describes how LCH SA calculates its LCR, how LCH SA reports the LCR daily, and the amount of LCR that would trigger an alert and further actions. Throughout Section 5.1, the Proposed Rule Change would update references to the length of time for which LCH SA must maintain liquidity resources from five to seven days and change the name of LCH SA's interoperable CCP to Euronext Clearing, consistent with changes elsewhere in the Framework.

Section 5.1 also describes how LCH SA monitors the allocation between cash and non-cash collateral and specifies that cash collateral should represent at least 25% of LCH SA's available liquid resources after the default of its most significant Clearing Member. The Proposed Rule Change would revise this to state that cash collateral and non-cash collateral that is eligible to be pledged at BdF (meaning Eligible Collateral) should represent at least 25% of LCH SA's available liquid resources after the default of its most significant Clearing Member. LCH SA is making this change in recognition that it can pledge Eligible Collateral for liquidity and further to conform the Framework with LCH SA's Liquidity Policy.

The Proposed Rule Change next would amend Section 5.3, titled Reverse Stress Test, which describes the reverse stress tests that LCH SA performs. LCH SA performs these reverse stress tests using extreme market conditions that go beyond what are considered plausible. As described in the introduction to Section 5.3, LCH SA uses these extreme market conditions to satisfy certain requirements of applicable law. The Proposed Rule Change would add to the discussion of applicable law a summary of Commission Rules 17Ad–22(e)(7)(vi)(B) and (C).[14] Throughout Section 5.3 the Proposed Rule Change also would update references to the length of time for which LCH SA must maintain liquidity resources from five to seven days and change the name of LCH SA's interoperable CCP to Euronext clearing, consistent with changes elsewhere in the Framework.

As described in Section 5.3, LCH SA conducts its reverse stress tests using two approaches. First, LCH SA conducts reverse stress tests using seven separate risk factors, with one single factor

[14] 17 CFR 240.17Ad–22(e)(7)(vi)(B) and (C).

stressed at a time. The Framework refers to these tests as ''single factor reverse stress tests'' or ''core reverse stress tests.'' Second, LCH SA tests the same risk factors together, under two different overall combinations of risk factors, which the Framework refers to as ''combined scenarios.'' One combined scenario aims to stress the structure of LCH SA's liquidity resources while the other combined scenario aims to simulate the effect of a macro-economic shock on LCH SA's liquidity resources.

Section 5.3.1, titled Independent stress of various risk factors, describes each of the seven risk factors, and the Proposed Rule Change would make various updates to this description. For example, the first risk factor considers the effect on LCH SA's liquid resources arising from a reduction in margin requirements. The description of this risk factor currently notes that a primary source of liquidity is from investment management by LCH SA's CaLM team. The Proposed Rule Change would revise this to note that a primary source of liquidity is from investment management *performed* by LCH SA's CaLM team. The Proposed Rule Change also would add an explanation that another primary source of liquidity for LCH SA is non-cash collateral that LCH SA can pledge to obtain liquidity.

The second risk factor considers the effect on LCH SA's liquidity resources arising from Clearing Members replacing Eligible Collateral that LCH SA can pledge for liquidity at BdF with collateral that LCH SA cannot pledge. The current Framework describes the collateral that LCH SA cannot pledge as, among others, U.K. or U.S. bonds, equities, and other non-Euro non-cash collateral. The Proposed Rule Change would add to this list pledge collateral, meaning collateral deposited in a SPA. As discussed above, LCH SA cannot use collateral deposited via SPA to obtain liquidity at BdF, even if that collateral is Eligible Collateral.

The third risk factor considers the impact from a downgrade in the rating of countries in the Eurozone. Such a downgrade could increase the haircut applied to Eligible Collateral when LCH SA pledges it at BdF to obtain liquidity. Currently, the Framework describes this risk factor as a reverse stress test that aims at modelling the downgrade of the relevant countries and estimating the theoretical ECB haircuts generating a liquidity shortfall. The Proposed Rule Change would revise this description to modelling the downgrade of the relevant countries and estimating the theoretical ECB haircuts *needed to generate* a liquidity shortfall.

The Proposed Rule Change would not make any amendments to the description of the fourth and fifth risk factors, which consider the effects of the increase of the maturity of the securities from the settlement of repo transactions and the effects of the market-to-market drop of tier 1 assets.

For the sixth risk factor, the Proposed Rule Change would revise the phrase ''the direction of the position'' to ''the direction of the positions.''

The seventh risk factor considers how many defaults LCH SA can sustain before experiencing a shortfall in liquidity. Here the Framework currently includes the following question: given that liquidity requirements are sized to a Cover 2 standard, is it plausible that there are more than 2 members who could lead to a liquidity deficit? The Proposed Rule Change would revise the phrasing of this question to ''2 member Groups defaults'' instead of ''2 members.'' Further, the current Framework specifies that, to answer this question, LCH SA rank orders Clearing Member Groups based on their internal credit scores (''ICS''), starting from the ones with the worst ICS. The Proposed Rule Change would revise the wording of this sentence to state instead that to answer this question, LCH SA ranks Clearing Member Groups on their ICS and starts with the one with the worst ICS. Finally, the current Framework notes that, starting from the top of the list, LCH SA assesses how many defaults have to take place to generate a liquidity shortage. The Proposed Rule Change would revise this slightly to state that, starting from the top of the list *and considering all member Group with ICS 6 or bigger,* LCH SA assesses how many defaults have to take place to generate a liquidity shortage.

Section 5.3.2, titled Combined reverse stress test scenarios, describes the combined reverse stress test scenarios. Section 5.3.2.1 currently notes that LCH SA performs these additional combined reverse stress tests quarterly. The Proposed Rule Change would revise this language to *at least* quarterly.

Section 5.3.2.2, titled Behavioural scenario, describes the combined scenario that stresses the structure of LCH SA's liquidity resources, including the individual risk factors that LCH SA combines to create this scenario. This section also describes the overall question that LCH SA seeks to answer with this reverse stress test, which is whether there is any combination of changes in the liquidity resources that could lead to a liquidity shortfall without any stress in the market. In addition to describing the risk factors tested and the overall aim of the scenario, Section 5.3.2.2 also provides an example of how LCH SA reports the results of the test. The Proposed Rule Change would update this example to reflect a new layout for the report.

Section 5.3.2.3, titled Macro-economic scenario, describes the combined scenario that simulates the effect of a macro-economic shock on LCH SA's liquidity resources. This section describes how LCH SA combines the individual risk factors to create the overall scenario, as well as the overall question that LCH SA seeks to answer with this reverse stress test, which is how many multiple defaults LCH SA can sustain until it experiences a liquidity shortfall in a shocked macro-economic environment. To simulate the shocked macro-economic environment, the Framework currently uses two macro-economic scenarios, which are described in Section 5.3.2.3. The Proposed Rule Change would remove these two scenarios and replace them with the same scenarios that it uses to determine its LCR.[15] The Proposed Rule Change would update this section and references to the scenarios accordingly. Throughout this section, the Proposed Rule Change also would change references to Clearing Members to Clearing Member Groups to clarify that this scenario considers Clearing Member Groups, rather than individual members, consistent with the overall Cover 2 requirement. Finally, the Proposed Rule Change would update the examples of the reports that LCH SA uses to present the results of this scenario. The Proposed Rule Change would update the layout of these examples to match the current versions used by LCH SA.

Section 5.3.3.3, titled Frequency and Reporting, would be a new section to describe how often LCH SA conducts testing, reviews the results, and reviews the underlying scenarios. As would be specified in Section 5.3.3.3, LCH SA would perform the core reverse stress tests monthly and the combined reverse stress test scenarios quarterly. Through its monthly core reverse stress tests, LCH SA would conduct a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources. In certain circumstances, LCH SA also would perform an ad hoc analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources. LCH SA would do so when

[15] As noted above, these scenarios are set out in Appendix 6.7.

the products it clears or markets it serves display high volatility or become less liquid; when the size or concentration of its Clearing Members' positions held increase significantly; or in any other appropriate circumstances that would lead to a liquidity coverage ratio falling below LCH SA's alert threshold. In this last circumstance, the ad hoc analysis would be reported to the LCH SA CRO, the Head of the LCH SA Collateral and Liquidity Management division, and to the LCH SA Risk Committee. Finally, Section 5.3.3 would require that the results and findings of the reverse stress tests exercise be reported monthly to LCH SA CRO and quarterly to LCH SA Risk Committee.

(vi) Section 6 Changes to the Framework

Section 6 of the Framework, titled Appendix, contains appendices to the main document. There are currently six appendices to the Framework. The Proposed Rule Change would revise Appendices two through five and add new Appendices seven and eight.

Appendix two, titled Members behaviour analysis, describes how LCH SA models the behavior of Clearing Members during a period of market stress. This appendix considers behaviors that could affect LCH SA's liquidity resources, such as replacing cash collateral with non-cash collateral, withdrawing excess collateral, and reducing positions (which in turn could reduce margin and guaranty fund requirements and therefore the financial resources available to LCH SA). Throughout this section the Proposed Rule Change would change relevant time horizons from five to seven days, consistent with the changes to main body of the Framework discussed above.

The Proposed Rule Change also would update the description of non-cash collateral that LCH SA cannot pledge at the BdF to obtain a liquidity line of credit. Appendix two currently describes this collateral as mainly Gilts and Central Bank Guarantees. The Proposed Rule Change would expand this list to include U.S. Treasuries, as well as securities denominated in Danish Krone, Norwegian Krone, Swedish Krona, Japanese Yen, Swiss Franc, Canadian Dollar, and Australian Dollar, because LCH SA cannot pledge such securities at BdF. Appendix two also currently notes that, although LCH SA cannot pledge this collateral at BdF, the use of this collateral by Clearing Members would not be material to LCH SA's liquidity resources. This is because, as currently described in Appendix two, this collateral represents a small percentage of total collateral, and LCH SA expects to limit use of this collateral. The Proposed Rule Change would revise this description to note that LCH SA has imposed concentration limits on collateral that it cannot pledge at BdF, rather than LCH SA expecting to limit the use of such collateral.

Appendix three, titled Reminder of SA's sources of liquidity and related risk drivers, is a table that describes, in summary form, LCH SA's sources of liquidity. For each source of liquidity, the table also describes risks that could affect the amount of liquidity that LCH SA can obtain for the source, as well as how LCH SA mitigates those risks. Here the Proposed Rule Change would change the name of LCH SA's interoperable CCP to Euronext. The Proposed Rule Change also would add an additional risk to one of LCH SA's liquidity sources. Currently the table lists non-cash collateral from Clearing Members as a source of liquidity because LCH SA may obtain liquidity with such collateral through investment transactions or by pledging Eligible Collateral at BdF. The Proposed Rule Change would note that a Clearing Member's ability to pledge non-cash collateral using a SPA is a risk to this liquidity source. This is a risk because LCH SA cannot use collateral deposited via a SPA to obtain liquidity, even if that collateral is Eligible Collateral.

Appendix four, titled Liquidity risk drivers synthesis by reports, is a table that describes, in summary form, LCH SA's liquidity needs. This table presents the liquidity needs according to three broad categories: (i) operational target (needs arising from LCH SA's business-as-usual operations); (ii) LCR (needs arising from Clearing Members' defaults); and (iii) Euronext LCR (needs arising from interoperating CCP's defaults). Here the Proposed Rule Change would change the name of LCH SA's interoperable CCP to Euronext and change the time horizon from five to seven days.

Appendix five, titled Liquidity risk monitoring reports, shows examples of the reports that LCH SA uses to monitor its liquidity. The Proposed Rule Change would update the layout of these examples to match the current versions used by LCH SA.

As noted, the Proposed Rule Change would add a new Appendix seven, which would be titled Stress scenarios list. It would contain a list of stress scenarios that LCH SA uses for each of its clearing services.

The Proposed Rule Change also would add a new Appendix eight, which would be titled Pseudo-code of settlement and market risk calculation. Appendix eight would explain the algorithm that LCH SA uses to calculate the settlement obligation driven liquidity requirements in the monitoring of the LCR and the resulting BdF liquidity raised by pledging the securities withdrawn from the settlement systems. This appendix would present the algorithm in pseudo-code format, meaning the appendix would show how the algorithm would look when programmed into a computer for calculation. This same algorithm would also be described in Section 4.2.5.1.1.1 and Section 4.2.5.1.1.2 of the Framework.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[16] For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[17] Rule 17Ad–22(e)(7) thereunder,[18] and Rules 17Ad–22(e)(7)(vi)(B) and (C)[19] thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, LCH SA's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of . . . derivative agreements, contracts, and transactions . . . .'' [20] Based on its review of the record, and for the reasons discussed below, the Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act because it improves LCH SA's management of its liquidity risk.[21]

LCH SA relies on the Framework to support its management of liquidity risk arising from a potential Clearing Member default, default of Euronext Clearing, and operational liquidity requirements. Managing such risks, such as through the maintenance of liquid resources sufficient to meet payment obligations, reduces the likelihood that LCH SA would fail to make payments when due, thereby avoiding disruptions to the settlement of transactions for which such payments are due. Thus, the Framework, as a rule of LCH SA, supports the prompt and

[16] 15 U.S.C. 78s(b)(2)(C).
[17] 15 U.S.C. 78q–1(b)(3)(F).
[18] 17 CFR 240.17Ad–22(e)(7).
[19] 17 CFR 240.17Ad–22(e)(7)(vi)(B) and (C).
[20] 15 U.S.C. 78q–1(b)(3)(F).
[21] 15 U.S.C. 78q–1(b)(3)(F).

accurate clearance and settlement of the derivatives transactions LCH SA clears, including security-based swaps.

Certain of the changes would update and clarify existing aspects of the Framework. These include the updates to overall scope, purpose, and use of the Framework in Section 1. Throughout the Framework, the Proposed Rule Change also would update the name of LCH SA's interoperable CCP to Euronext Clearing. These updates and clarifications contribute to the effectiveness of the Framework as a tool supporting LCH SA's management of liquidity risk arising from a potential member default, default of Euronext Clearing, and operational liquidity requirements, which facilitates prompt and accurate clearance and settlement.

In addition to updating and clarifying the Framework, the Proposed Rule Change also would revise how LCH SA determines its liquidity sources and needs under the Framework. With respect to sources of liquidity, the Proposed Rule Change would require LCH SA to consider Clearing Members' ability to switch from depositing collateral using FTTAs to SPAs. Such switches could reduce the amount of liquidity that LCH SA is able to obtain when pledging Eligible Collateral at BdF because LCH SA cannot pledge any collateral deposited via SPAs. Similarly, the Proposed Rule Change would require LCH SA to consider stressed market prices when determining the amount of liquidity that it could obtain by pledging Eligible Collateral at BdF. The amount of liquidity that LCH SA could obtain is based on the value of the collateral at the time of the pledge, minus an applicable haircut, and potential stress market conditions could decrease the value of the collateral or increase the haircut.

With respect to LCH SA's liquidity needs, the Proposed Rule Change would prevent netting between Clearing Members of the same group. Eliminating netting potentially could increase the liquidity needs generated among a group of related Clearing Members. The Proposed Rule Change also would extend to seven days (from five days) the time horizon for which LCH SA must maintain liquidity resources sufficient to meet its liquidity requirements. Doing so could potentially increase the amount of LCH SA's liquidity requirements. Finally, the Proposed Rule Change would require that LCH SA consider the liquidity requirements generated by the expiration of physically settled stock futures, adding another potential liquidity need to LCH SA's existing liquidity needs.

These changes, taken together, would improve LCH SA's ability to determine the amount of its liquidity needs and the amount of its resources to satisfy those liquidity needs. More accurately determining the amount of LCH SA's liquidity needs and resources would thereby improve LCH SA's ability to control and quantify its liquidity risk. Control over and accurate measurement of liquidity risk is necessary to ensure that LCH SA's liquidity needs do not exceed its resources so that LCH SA can meet its payment obligations on time without disrupting settlement. Thus, the proposed changes to the Framework promote prompt and accurate clearance and settlement.

The Commission finds, therefore, that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[22]

B. Consistency With Rule 17Ad–22(e)(7) Under the Act

Rule 17Ad–22(e)(7) requires LCH SA to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by LCH SA, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[23] As noted above, LCH SA uses the Framework to measure, monitor, and manage its liquidity risk. The Proposed Rule Change would improve the Framework by more accurately determining the amount of LCH SA's liquidity needs and resources. In doing so, the Proposed Rule Change would help ensure that the Framework is designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by LCH SA. The Commission therefore finds that the Proposed Rule Change is consistent with rule 17Ad–22(e)(7).[24]

C. Consistency With Rules 17Ad–22(e)(7)(vi)(B) and (C) Under the Act

Rules 17Ad–22(e)(7)(vi)(B) and (C)[25] require LCH SA to establish, implement, maintain, and enforce written policies and procedures reasonably designed to determine the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under Rule 17Ad–22(e)(7)(i) by, at a minimum: (i) conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining its identified liquidity needs and resources in light of current and evolving market conditions and (ii) conducting a comprehensive analysis of the scenarios, models, and underlying parameters and assumptions used in evaluating its liquidity needs and resources more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by its participants increases significantly, or in other appropriate circumstances described in such policies and procedures. The Proposed Rule Change would add to the Framework a new Section 5.3.3.3, which would require that LCH SA perform its core reverse stress tests monthly, through which LCH SA would conduct a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources. Section 5.3.3 also would require that an ad-hoc analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources in certain circumstances. LCH SA would do so when the products it clears or markets it serves display high volatility or become less liquid; when the size or concentration of its clearing members' positions held increase significantly; or in any other appropriate circumstances that would lead to a liquidity coverage ratio falling below LCH SA's alert threshold. These changes would be consistent with the requirements of Rules 17Ad–22(e)(7)(vi)(B) and (C).[26] The Commission therefore finds that the Proposed Rule Change is consistent with Rules 17Ad–22(e)(7)(vi)(B) and (C).[27]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act,[28] Rule 17Ad–22(e)(7) thereunder,[29]

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(7).

[24] 17 CFR 240.17Ad–22(e)(7).

[25] 17 CFR 240.17Ad–22(e)(7)(vi)(B) and (C).

[26] 17 CFR 240.17Ad–22(e)(7)(vi)(B) and (C).

[27] 17 CFR 240.17Ad–22(e)(7)(vi)(B) and (C).

[28] 15 U.S.C. 78q–1(b)(3)(F).

[29] 17 CFR 240.17Ad–22(e)(7)

and Rules 17Ad–22(e)(7)(vi)(B) and (C) [30] thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR–LCH SA–2023–004) be, and hereby is, approved.[31]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15401 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100475; File No. SR–EMERALD–2024–16]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Relating to the Continuing Education for Registered Persons as Provided Under Exchange Rule 1903

July 9, 2024.

Pursuant to the provisions of 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 June 28, 2024, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretation and Policy .01 to Exchange Rule 1903, Continuing Education, to reopen the period by which eligible Members [3] who participate in the Maintaining Qualifications Program (''MQP'') will be able to complete their prescribed 2022 and 2023 continuing education content.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings,* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 amend Interpretation and Policy .01 to Exchange Rule 1903, Continuing Education, to provide eligible Members another opportunity to elect to reopen the period by which certain participants in the MQP will be able to complete their prescribed 2022 and 2023 continuing education content.

In 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') implemented rule changes, which amended its Continuing Education (''CE'') Program requirements to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual CE through a new program, the MQP.[4] Under FINRA Rule 1240.01, the MQP designated a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to March 15, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (''FSAWP'') [5] under FINRA Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) immediately prior to March 15, 2022 (collectively, ''Look-Back Individuals'').

In 2023, FINRA amended FINRA Rule 1240.01, to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the ''FINRA Second Enrollment Period'').[6] The proposed rule change required that Look-Back Individuals who elect to participate in the MQP during the FINRA Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024. Look-Back Individuals who are enrolled in the MQP, similar to other MQP participants, are able to complete any prescribed CE and renew their annual MQP participation through their FINRA Financial Professional Gateway (''FinPro'') accounts.

In response to FINRA's rule changes and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges, the Exchange implemented rule changes to align with FINRA's CE Program.[7] Such rules, among other things, provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing CE through the MQP. Further, Exchange Rule 1903, Interpretation and Policy .01, includes a look-back provision that, subject to specified conditions, extends the option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately

[30] 17 CFR 240.17Ad–22(e)(7)(vi)(B) and (C).

[31] In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). Other exchanges, including the Exchange, subsequently filed copycat rule filings to align their continuing education rules with those of FINRA. *See* Securities Exchange Act Release No. 95177 (June 29, 2022), 87 FR 40324 (July 6, 2022) (SR–EMERALD–2022–22) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1900, Registration Requirements, Exchange Rule 1903, Continuing Education Requirements, and Exchange Rule 1904, Electronic Filing Requirements for Uniform Forms).

[5] The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. The Exchange stopped accepting new participants for the FSAWP beginning on July 1, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

[6] *See* Securities Exchange Act Release No. 97184 (Mar. 22, 2023), 88 FR 18359 (Mar. 28, 2023) (SR–FINRA–2023–005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity to Elect to Participate in the Maintaining Qualifications Program).

[7] *See* Exchange Rules 1900, 1903, and 1904.

preceding July 1, 2022, and (ii) individuals who have been participants of the FSAWP immediately preceding July 1, 2022 implementation (*i.e.,* Look-Back Individuals).

Exchange Rule 1903 also provided Look-Back Individuals with a second enrollment period, between September 18, 2023, and December 31, 2023 (the ''Exchange Second Enrollment Period''). Exchange Rule 1903, Interpretation and Policy .01, requires that Look-Back Individuals who elect to participate in the MQP during the Exchange Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.[8]

FINRA recently submitted a proposal related to its CE Program (the ''FINRA Rule Change'').[9] The proposal set forth changes to FINRA Rule 1240.01, to provide Look-Back Individuals enrolled in the MQP in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 CE content as of March 31, 2024, the opportunity to complete such content between May 22, 2024, and July 1, 2024, to be eligible to continue their participation in the MQP.[10] In addition, the proposed rule change provides that any such individuals who will have completed their prescribed 2022 and 2023 CE content between March 31, 2024, and May 22, 2024, will be deemed to have completed such content by July 1, 2024, for purposes of the rule.

In the FINRA Rule Change, FINRA noted that it sent multiple reminders, including a March 16, 2024 email, to Look-Back Individuals who had enrolled in the MQP but had not completed their prescribed CE to remind them of the March 31, 2024 deadline. In the FINRA Rule Change, FINRA further noted that in the week leading up to the deadline, FINRA noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.[11] Per the FINRA Rule Change, FINRA believes that some of those individuals may have been confused by the layout of their FinPro accounts. Specifically, if they selected the 2024 renewal banner, which was prominently displayed on their FinPro accounts, and completed the renewal process, they would not have been automatically redirected to complete any prescribed CE. Therefore, individuals may have inadvertently assumed that completion of the renewal process alone would have satisfied all of the necessary requirements to continue their participation in the MQP.[12]

For similar reasons and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges, the Exchange is also proposing to amend its rules (*i.e.,* Exchange Rule 1903, Interpretation and Policy .01) to provide Look-Back Individuals enrolled in the MQP in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 CE content as of March 31, 2024, the opportunity to complete such content between the effective date of this filing, and July 1, 2024, to be eligible to continue their participation in the MQP.[13] In addition, the proposed rule change provides that any such individuals who will have completed their prescribed 2022 and 2023 CE content between March 31, 2024, and the effective date of this filing, will be deemed to have completed such content by July 1, 2024, for purposes of the rule.

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) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's rule proposal is intended to harmonize the Exchange's supervision rules, specifically with respect to the continuing education requirements with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange.

The Exchange believes that reopening the period by which Look-Back Individuals will be able to complete their prescribed 2022 and 2023 CE content is appropriate under the circumstances. As FINRA noted in the FINRA Rule Change, Look-Back Individuals who had enrolled in the MQP in 2022 and 2023 but had not completed their prescribed 2022 and 2023 CE content by the March 31, 2024 deadline may have been confused, as described above. The Exchange believes that participation in the MQP reduces unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry.

[8] The Exchange determined to treat the individuals who enrolled during the first period (preceding July 1, 2022) the same as those who enrolled during the second period (between September 18, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content. This is because those who had enrolled in the MQP during the first period satisfied all of the eligibility criteria for enrollment during the second period and would have been able to complete their prescribed CE content by March 31, 2024, had they chosen to enroll during the second period instead of enrolling during the first period.

[9] *See* Securities Exchange Act Release No. 100067 (May 6, 2024), 89 FR 40520 (May 10, 2024) (SR–FINRA–2024–006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Reopen the Period by Which Certain Participants in the Maintaining Qualifications Program May Complete Their Prescribed Continuing Education Content).

[10] This would include any Look-Back Individuals who were still in the process of completing their prescribed CE content as of March 31, 2024.

[11] Look-Back Individuals who enrolled in the MQP have until December 31, 2024, to renew their participation in the MQP for 2024, provided that they complete their prescribed CE by the stated deadline.

[12] According to FINRA, a number of these individuals contacted FINRA to confirm whether they were required to satisfy any additional requirements other than completing the 2024 renewal. To provide FINRA with additional time to assess the situation, FINRA temporarily changed the March 31, 2024, due date for CE completion in its systems. This may have compounded the confusion because any Look-Back Individual who may have logged into their FinPro account during this time would have seen an interim CE completion date and would have been able to complete their prescribed CE content based on that interim CE completion date.

[13] This would include any Look-Back Individuals who were still in the process of completing their prescribed CE content as of March 31, 2024.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

The Exchange believes that reopening the CE completion period, as proposed, will further these goals and objectives.

Further, the Exchange believes the proposed amendments reduce the possibility of a regulatory gap between Exchange and FINRA rules, providing more uniform standards across the securities industry. The Exchange believes that the proposed rule change will bring consistency and uniformity with FINRA's recently amended CE Program, which will, in turn, assist members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes make ministerial changes to the Exchange's CE rules to align them with the CE rules of FINRA, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange has stated that a waiver of the operative delay would allow the Exchange to implement the proposed changes to its CE rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules. The Exchange has also stated that a waiver would provide more uniform standards across the securities industry and help to avoid confusion for Exchange members that are also FINRA members. The Exchange believes a waiver would also provide immediately clarity to impacted individuals, thus minimizing the potential for confusion regarding the time frames for satisfying continuing education content in order to maintain eligibility to participate in the continuing education program. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[21]

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 under Section 19(b)(2)(B)[22] 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–EMERALD–2024–16 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–EMERALD–2024–16. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also 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–EMERALD–2024–16 and should be submitted on or before August 5, 2024.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 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.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15406 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100478; File No. SR–ISE–2024–21]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Adopt Rules To Permit the Listing of Two Monday Expirations for Options on United States Oil Fund, LP, United States Natural Gas Fund, LP, SPDR Gold Shares, iShares Silver Trust, and iShares 20+ Year Treasury Bond ETF

July 9, 2024.

On May 16, 2024, Nasdaq ISE, LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the listing of two Monday expirations for options on United States Oil Fund, LP, United States Natural Gas Fund, LP, SPDR Gold Shares, iShares Silver Trust, and iShares 20+ Year Treasury Bond ETF. The proposed rule change was published for comment in the **Federal Register** on May 30, 2024.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 14, 2024. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 28, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ISE–2024–21).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15409 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100476; File No. SR–CboeBYX–2024–024]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Regarding Dedicated Cores

July 9, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2024, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 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

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX Equities'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/BYX/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

The Exchange proposes to amend its fee schedule to amend the fees and increase the maximum cap for Dedicated Cores.[3]

By way of background, the Exchange recently began to allow Users[4] to assign a Single Binary Order Entry (''BOE'') logical order entry port[5] to a single dedicated Central Processing Unit (CPU Core) (''Dedicated Core''). Historically, CPU Cores had been shared by logical order entry ports (*i.e.,* multiple logical ports from multiple firms may connect to a single CPU Core). Use of Dedicated Cores however, can provide reduced latency, enhanced throughput, and improved performance since a firm using a Dedicated Core is utilizing the full processing power of a CPU Core instead of sharing that power with other firms. This offering is completely voluntary and is available to all Users that wish to purchase Dedicated Cores. Users may utilize BOE logical order entry ports on shared CPU Cores, either in lieu of, or in addition to, their use of Dedicated Core(s). As such, Users are able to operate across a mix of shared

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 100223 (May 23, 2024), 89 FR 46926.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially adopted pricing for Dedicated Cores on May 6, 2024 (SR–CboeBYX–2024–014). On July 1, 2024 the Exchange withdrew that filing and submitted this filing.

[4] A User may be either a Member or Sponsored Participant. The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. A Sponsored Participant may be a Member or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member subject to certain conditions. See Exchange Rule 11.3.

[5] Users may currently connect to the Exchange using a logical port available through an application programming interface (''API''), such as the Binary Order Entry (''BOE'') protocol. A BOE logical order entry port is used for order entry.

and dedicated CPU Cores which the Exchange believes provides additional risk and capacity management. Further, Dedicated Cores are not required nor necessary to participate on the Exchange and as such Users may opt not to use Dedicated Cores at all.

The Exchange proposes to assess the following monthly fees for Users that wish to use Dedicated Cores and adopt a maximum limit. First, the Exchange proposes to provide up to two Dedicated Cores to all Users who wish to use Dedicated Cores, at no additional cost. For the use of more than two Dedicated Cores, the Exchange proposes to assess the following fees: $650 per Dedicated Core for 3–10 Dedicated Cores; $850 per Dedicated Core for 11–15 Dedicated Cores; and $1,050 per Dedicated Core for 16 or more Dedicated Cores. The proposed fees are progressive and the Exchange proposes to include the following example in the Fees Schedule to provide clarity as to how the fees will be applied. Particularly, the Exchange will provide the following example: if a User were to purchase 11 Dedicated Cores, it will be charged a total of $6,050 per month ($0 * 2 + $650 * 8 + $850 * 1). The Exchange also proposes to make clear in the Fees Schedule that the monthly fees are assessed and applied in their entirety and are not prorated. The Exchange notes the current standard fees assessed for BOE Logical Ports, whether used with Dedicated or shared CPU cores, will remain applicable and unchanged.[6]

Since the Exchange currently has finite amount of physical space in its data centers in which its servers (and therefore corresponding CPU Cores) are located, the Exchange also proposes to prescribe a maximum limit on the number of Dedicated Cores that Users may purchase each month. The purpose of establishing these limits is to manage the allotment of Dedicated Cores in a fair manner and to prevent the Exchange from being required to expend large amounts of resources in order to provide an unlimited number of Dedicated Cores. The Exchange previously established a limit for Members of a maximum number of 20 Dedicated Cores and Sponsoring Members a limit of a maximum number of 8 Dedicated Cores for each of their Sponsored Access relationships.[7] Now that the Exchange has a better understanding of User demand relative to its available space since the initial launch three months ago, the Exchange proposes to increase that cap and provide that Members will be limited to a maximum number of 60 Dedicated Cores[8] and Sponsoring Members will be limited to a maximum number of 25 Dedicated Cores for each of their Sponsored Access relationships.[9] The Exchange notes that it will continue monitoring Dedicated Core interest by all Users and allotment availability with the goal of increasing these limits to meet Users' needs if and when the demand is there and the Exchange is able to accommodate additional Dedicated Cores.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)[13] of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposal is reasonable because the Exchange is offering any Users who wishes to utilize Dedicated Cores up to two Dedicated Cores at no additional cost.[14] The Exchange believes the proposed fees are reasonable because Dedicated Cores provide a valuable service in that it may provide reduced latency, enhanced throughput, and improved performance compared to use of a shared CPU Core since a firm using a Dedicated Core is utilizing the full processing power of a CPU Core. The Exchange also emphasizes however, that the use of Dedicated Cores is not necessary for trading and as noted above, is entirely optional. Users can also continue to access the Exchange through shared CPU Cores at no additional cost. Indeed, less than half of the Exchange's Members currently use Dedicated Cores. Depending on a firm's specific business needs, the proposal enables Users to choose to use Dedicated Cores in lieu of, or in addition to, shared CPU Cores (or as noted, not use Dedicated Cores at all). If a User finds little benefit in having Dedicated Cores, or determines Dedicated Cores are not cost-efficient for its needs or does not provide sufficient value to the firm, such User may continue its use of the shared CPU Cores, unchanged. The Exchange also has no plans to eliminate shared CPU Cores nor to require Users to purchase Dedicated Cores. The Exchange also notes that the proposed fees are the same as the fees recently adopted and assessed for Dedicated Cores on its affiliated exchange, Cboe EDGA Exchange, Inc. (''Cboe EDGA'').[15]

[6] The Exchange currently assesses $550 per port per month. *See* Cboe BYX Equities Fee Schedule.

[7] *See* Securities Exchange Act Release No. 100122 (May 13, 2024) 89 FR 43452 (May 17, 2024) (SR–CboeBYX–2024–014).

[8] The prescribed maximum quantity of Dedicated Cores for Members applies regardless of whether that Member purchases the Dedicated Cores directly from the Exchange and/or through a Service Bureau. In a Service Bureau relationship, a customer allows its MPID to be used on the ports of a technology provider, or Service Bureau. One MPID may be allowed on several different Service Bureaus.

[9] The fee tier(s) applicable to Sponsoring Members are determined on a per Sponsored Access relationship basis and not on the combined total of Dedicated Cores across Sponsored Users. For example, under the proposed changes, a Sponsoring Member that has three Sponsored Access relationships is entitled to a total of 75 Dedicated Cores for those 3 Sponsored Access relationships but would be assessed fees separately based on the 25 Dedicated Cores for each Sponsored User (instead of combined total of 75 Dedicated Cores). For example, a Sponsoring Member with 3 Sponsored Access relationships would pay $19,950 per month if each Sponsored Access relationship purchased the maximum 25 Dedicated Cores. More specifically, the Sponsoring Member would be provided 2 Dedicated Cores at no additional cost for each Sponsored User under Tier 1 (total of 6 Dedicated Cores at no additional cost) and provided an additional 8 Dedicated Cores at $650 each for each Sponsored User, 5 Dedicated Cores at $850 each for each Sponsored User and 10 Dedicated Cores at $1,050 each for each Sponsored User (combined total of 69 additional Dedicated Cores).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78f(b)(4).

[14] Of the Users that currently maintain Dedicated Cores, approximately 35% maintain 1 or 2 Dedicated Cores and therefore pay no additional fees.

[15] *See* Cboe U.S. Equities Fee Schedule, EDGA Equities, Dedicated Cores. *See* Securities Exchange Act Release No. 100300 (June 10, 2024) 89 FR 50653 (June 14, 2024) (SR–CboeEDGA2024–020).

The Exchange also believes that the proposed Dedicated Core fees are equitable and not unfairly discriminatory because they continue to be assessed uniformly to similarly situated users in that all Users who choose to purchase Dedicated Cores will be subject to the same proposed tiered fee schedule. Further all Users are entitled to up to 2 Dedicated Cores at no additional cost. The Exchange believes the proposed ascending fee structure is also reasonable, equitable and not unfairly discriminatory as it is designed so that firms that use a higher allotment of the Exchange's finite number of Dedicated Cores pay higher rates, rather than placing that burden on market participants that have more modest needs who will have the flexibility of obtaining Dedicated Cores at lower price points in the lower tiers. As such, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the ascending fee structure reflects the (finite) resources consumed by the various needs of market participants—that is, the lowest Dedicated Core consuming Users pay the least, and highest Dedicated Core consuming Users pay the most. Other exchanges similarly assess higher fees to those that consume more Exchange resources.[16] It's also designed to encourage firms to manage their needs in a fair manner and to prevent the Exchange from being required to expend large amounts of resources in order to provide an additional number of Dedicated Cores. Moreover, as discussed above and in more detail below, the Exchange cannot currently offer an unlimited number of Dedicated Cores due in part to physical space constraints. The Exchange believes the proposed ascending fee structure is another appropriate means, in conjunction with an established cap, to manage this finite resource and ensure the resource is apportioned more fairly.

The Exchange believes it is reasonable to limit the number of Dedicated Cores Users can purchase because the Exchange has a finite amount of space in its third-party data centers to accommodate CPU cores, including Dedicated Cores. The Exchange must also take into account timing considerations in procuring additional Dedicated Cores and related hardware such as servers, switches, optics and cables, as well as the readiness of the Exchange's data center to accommodate additional Dedicated Cores in the Exchange's respective Order Handler Cabinets. The Exchange has, and will continue to, monitor market participant demand and space availability and endeavor to adjust the limit if and when the Exchange is able to accommodate additional Dedicated Cores. The Exchange monitors its capacity and data center space and thus is in the best place to determine these limits and modify them as appropriate in response to changes to this capacity and space, as well as market demand. For example, since the launch of Dedicated Cores on February 26, 2024, the Exchange's affiliate Cboe EDGA has increased the prescribed maximum limit twice as a result of evaluating the demand relative to Dedicated Cores availability.[17] The proposed limits also apply uniformly to similarly situated market participants (*i.e.,* all Members are subject to the same limit and all Sponsored Participants are subject to the same limit, respectively). The Exchange believes it's not unfairly discriminatory to provide for different limits for different types of Users. For example, the Exchange believe it's not unfairly discriminatory to provide for an initial lower limit to be allocated for Sponsored Participants because unlike Members, Sponsored Participants are able to access the Exchange without paying a Membership Fee. Members also have more regulatory obligations and risk that Sponsored Participants do not. For example, while Sponsored Participants must agree to comply with the Rules of the Exchange, it is the Sponsoring Member of that Sponsored Participant that remains ultimately responsible for all orders entered on or through the Exchange by that Sponsored Participant. The industry also has a history of applying fees differently to Members as compared to Sponsored Participants.[18] Lastly, the Exchange believes its proposed maximum limits, and distinction between Members and Sponsored Users, is another appropriate means to help the Exchange manage its allotment of Dedicated Cores and better ensure this finite resource is apportioned fairly.

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 intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed tiered fee structure will apply equally to all similarly situated Users that choose to use Dedicated Cores. As discussed above, Dedicated Cores are optional and Users may choose to utilize Dedicated Cores, or not, based on their views of the additional benefits and added value provided by utilizing a Dedicated Core. The Exchange believes the proposed fee will be assessed proportionately to the potential value or benefit received by Users with a greater number of Dedicated Cores and notes that Users may determine at any time to cease using Dedicated Cores. As discussed, Users can also continue to access the Exchange through shared CPU Cores at no additional cost. Finally, all Users will be entitled to two Dedicated Cores at no additional cost.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market, including competition for exchange memberships. Market Participants have numerous alternative venues that they may participate on, including 15 other equities exchanges, as well as off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to submit their order flow to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution';

[16] *See also* Cboe U.S. Options Fees Schedule, BZX Options, Options Logical Port Fees, Ports with Bulk Quoting Capabilities.

[17] *See* Securities Exchange Act Release No. 99983 (April 17, 2024) 89 FR 30418 (April 23, 2024) (SR–CboeEDGA–2024–014).

[18] *See e.g.,* Securities Exchange Act Release No. 68342 (December 3, 2012) 77 FR 73096 (December 7, 2012) (SR–CBOE–2012–114) and Securities Exchange Act Release No. 66082 (January 3, 2012) 77 FR 1101 (January 9, 2012) (SR–C2–2011–041).

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[20] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and paragraph (f) of Rule 19b–4 [22] thereunder. 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 coment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeBYX–2024–024 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–CboeBYX–2024–024. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–CboeBYX–2024–024 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15407 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100479; File No. SR–BX–2024–019]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an OTTO Protocol

July 9, 2024.

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 June 26, 2024, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 adopt a new protocol, ''Ouch to Trade Options'' or ''OTTO'' and establish pricing for this new protocol.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

BX proposes to offer a new order entry protocol called OTTO. Today, BX Participants may enter orders into the Exchange through the ''Financial Information eXchange'' or ''FIX.'' [3] The proposed new OTTO protocol is identical to the OTTO protocol offered

[20] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FIX is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. In addition, a BX Participant may elect to utilize FIX to send a message and PRISM Order, as defined within Options 3, Section 13, to all BX Participants that opt in to receive Requests for PRISM requesting that it submit the sender's PRISM Order with responder's Initiating Order, as defined within Options 3, Section 13, into the Price Improvement Auction (''PRISM'') mechanism, pursuant to Options 3, Section 13 (''Request for PRISM''). *See* Options 3, Section 7(e)(1)(A).

today on 3 Nasdaq affiliated exchanges, Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'').

The OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants.

OTTO Protocol

As proposed, OTTO would allow Participants and their Sponsored Customers [4] to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. OTTO features would include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) System [5] event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. The Exchange notes that unlike FIX, which offers routing capability, OTTO does not permit routing. The Exchange proposes to include this description of OTTO in new Options 3, Section 7(e)(1)(B) and re-letter current ''B'' as ''C''.

Only one order protocol is required for a BX Participant to submit orders into BX. Only BX Participants may utilize ports on BX. Any market participant that sends orders to a BX Participant would not need to utilize a port. The BX Participant may send all orders, proprietary and agency, through one port to BX. Participants may elect to obtain multiple ports to organize their business,[6] however only one port is necessary for a Participant to enter orders on BX.

Participants may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. Participants may prefer one protocol as compared to another protocol, for example, the ability to route may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may prefer OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior. Nasdaq believes that the addition of OTTO will provide BX Participants with additional choice when submitting orders to BX.

While the Exchange has no way of predicting with certainty the amount or type of OTTO Ports market participants will in fact purchase, the Exchange anticipates that some Participants will subscribe to multiple OTTO Ports in combination with FIX Ports. The Exchange notes that Options Participants may use varying number of OTTO ports based on their business needs.

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other rules within Options 3. Each amendment is described below.

Options 3, Section 7

BX proposes to amend Options 3, Section 7, Types of Orders and Quote Protocols. Specifically, BX proposes to amend Options 3, Section 7 (b)(2) that describes the Immediate-or-Cancel'' or ''IOC'' order. Today, Options 3, Section 7(b)(2)(B) notes that an IOC order may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2), and (b)(2), respectively. The Exchange proposes to add ''OTTO'' to the list of protocols to note that an IOC order may also be entered through OTTO.

BX also proposes to amend the ''DAY'' order in Options 3, Section 7(b)(3) that currently provides that a Day order may be entered through FIX. With the addition of OTTO, a Day order may also be entered through OTTO.

BX also proposes to amend the ''Good Til Cancelled'' or ''GTC'' order which currently does not specify that a GTC order may be entered through FIX. GTC orders would only be able to be entered through FIX and not OTTO. The Exchange proposes to amend Options 3, Section 7(b)(4) to add a sentence to note that GTC orders may be entered through FIX.

Options 3, Section 8

BX proposes to amend Options 3, Section 8, Options Opening Process. BX proposes to amend Options 3, Section 8(l) that describes the Opening Process Cancel Timer. The Opening Process Cancel Timer represents a period of time since the underlying market has opened. If an option series has not opened before the conclusion of the Opening Process Cancel Timer, a Participant may elect to have orders returned by providing written notification to the Exchange. Today, these orders include all non-Good Til Cancelled Orders received over the FIX protocol. The Exchange proposes to add the OTTO protocol as well to the rule text language in that paragraph.

Options 3, Section 12

The Exchange proposes to amend the Options 3, Section 12, Crossing Orders. Specifically, the Exchange proposes to amend Customer Crossing Orders in Options 3, Section 12(a) that currently provides Public Customer-to-Public Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO. Public Customer-to-Public Customer Cross Orders must be entered through FIX. The Exchange proposes to remove the sentence that provides that Public Customer-to-Public Customer Cross Orders must be entered through FIX because they will be able to be entered through both FIX and OTTO.

Options 3, Section 17

The Exchange proposes to amend the Kill Switch at Options 3, Section 17. The Kill Switch provides Participants with an optional risk management tool to promptly cancel and restrict orders.

[4] General 2, Section 22 describes Sponsored Access arrangements.

[5] The term ''System'' or ''Trading System'' means the automated system for order execution and trade reporting owned and operated by BX as the BX Options market. The BX Options market comprises: (A) an order execution service that enables Participants to automatically execute transactions in option series; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (B) a trade reporting service that submits ''locked-in'' trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a ''locked-in'' trading environment; and (C) the data feeds described in Options 3, Section 23. *See* BX Options 1, Section 1(a)(59).

[6] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons, segregating order flow among different trading desks, or other determinations that are specific to that Participant. A market participant may utilize multiple ports in some cases to send multiple orders through different ports to avoid any latency or queuing of orders. The Exchange notes that to the extent that different OTTO Ports are used to send multiple orders as compared to sending multiple orders through one OTTO Port the difference from a latency standpoint would be in nanoseconds.

With the introduction of OTTO, the Exchange proposes to align its Kill Switch rule text with MRX's Kill Switch.[7] The Exchange proposes to note in Options 3, Section 17(a) that BX Participants may initiate a message(s) to the System to promptly cancel and restrict their order activity on the Exchange, as is the case today, as described in section (a)(1). This amendment simply rewords the rule text without a substantive amendment to the rule text.

The Exchange proposes to renumber Options 3, Section 17(a)(i) and (ii) as (a)(1) and (2). Current Options 3, Section 17(a)(i) states, ''If orders are cancelled by the BX Participant utilizing the Kill Switch, it will result in the cancellation of all orders requested for the Identifier(s). The BX Participant will be unable to enter additional orders for the affected Identifier(s) until re-entry has been enabled pursuant to section (a)(ii).'' The Exchange proposes to instead provide, ''A BX Participant may submit a request to the System through FIX or OTTO to cancel all existing orders and restrict entry of additional orders for the requested Identifier(s) on a user level on the Exchange.'' With the addition of OTTO, the Exchange notes that both FIX and OTTO orders may be cancelled. Further, today, BX Participants utilize an interface to send a message to the Exchange to initiate a Kill Switch.[8] The Exchange notes that in lieu of the interface, BX Participants will only be able to initiate a cancellation of their orders by sending a mass purge request through FIX or OTTO. This change will align the Kill Switch functionality to that of ISE, GEMX and MRX Options 3, Section 17 and will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface. When initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only. This is a change from the ability to cancel orders on either a user or group level[9] with the interface. The Exchange proposes to amend Options 3, Section 17(a) to note this change by removing the words ''or group'' and the following sentence that applies to a group.[10]

Finally, the Exchange proposes to amend proposed Options 3, Section 17(a)(2) to align to MRX's rule text by providing ''Once a BX Participant initiates a Kill Switch pursuant to (a)(1) above . . .'' in the first sentence. This amendment simply rewords the rule text without a substantive amendment to the rule text.

Options 3, Section 18

The Exchange proposes to amend Options 3, Section 18, Detection of Loss of Communication. The Exchange proposes to add OTTO to Options 3, Section 18 as OTTO would also be subject to this rule. Today, when the SQF Port or the FIX Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant's affected Client Application and automatically cancel all of the Participant's open quotes through SQF and open orders through FIX. Quotes and orders are cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues.

At this time, the Exchange proposes to permit orders entered through OTTO to be cancelled similar to FIX orders when the Exchange's server does not receive a Heartbeat message for a certain time period. The Exchange is proposing to amend Options 3, Section 18 to also rearrange the rule text to add the word ''Definitions'' next to ''a'' and move the rule text in current ''a'' to ''b'' and re-letter the other paragraphs accordingly. Also, the Exchange proposes to define ''Session of Connectivity'' for purposes of this rule to mean each time the Participant connects to the Exchange's System. Further, each new connection, intra-day or otherwise, is a new Session of Connectivity. The Exchange proposes to use the new definition throughout Options 3, Section 18.

Similar to FIX, when the OTTO Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant's affected Client Application and automatically cancel all of the Participant's open orders through OTTO. Orders would be cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues. The Exchange proposes to update Options 3, Section 18 to provide in proposed Options 3, Section 18(a)(3) that the OTTO Port is the Exchange's proprietary System component through which Participants communicate their orders from the Client Application. Further, the Exchange would note in proposed Options 3, Section 18(c) that when the OTTO Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period (''nn'' seconds), the Exchange will automatically logoff the Participant's affected Client Application and if the Participant has elected to have its orders cancelled pursuant to proposed Section 18(f), automatically cancel all orders. Proposed Options 3, Section 18(f) would provide that the default period of ''nn'' seconds for OTTO Ports would be fifteen (15) seconds for the disconnect and, if elected, the removal of orders. A Participant may determine another time period of ''nn'' seconds of no technical connectivity, as required in proposed paragraph (c), to trigger the disconnect and, if so elected, the removal of orders and communicate that time to the Exchange. The period of ''nn'' seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for OTTO Ports prior to each Session of Connectivity to the Exchange. This feature may be disabled for the removal of orders, however the Participant will be disconnected.

Proposed Options 3, Section 18(f)(1) would provide that if the Participant changes the default number of ''nn'' seconds, that new setting shall be in effect throughout the current Session of Connectivity and will then default back to fifteen seconds. The Participant may change the default setting prior to each Session of Connectivity. Finally, as proposed in Options 3, Section 18(f)(2), if the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Participant will persist for each subsequent Session of Connectivity until the Participant either contacts Exchange operations by phone and changes the setting or the Participant selects another time period through the Client Application prior to the next Session of Connectivity. The trigger for OTTO Ports is event and Client Application specific. The automatic cancellation of the BX

[7] *See* MRX Options 3, Section 17.

[8] *See* Securities Exchange Act Release No. 76116 (October 8, 2015), 80 FR 62147 (October 15, 2015) (SR–BX–2015–050) (Order Approving Proposed Rule Change To Adopt a Kill Switch).

[9] A permissible group could include all badges associated with a Market Maker. Today, a Participant is able to set up these groups in the interface to include all or some of the Identifiers associated with the Participant firm so that a GUI Kill Switch request could apply to this pre-defined group.

[10] The Exchange proposes to remove this sentence, ''Permissible groups must reside within a single broker-dealer'' as the group option would no longer exist.

Options Market Maker's open orders for OTTO Ports entered into the respective OTTO Ports via a particular Client Application will neither impact nor determine the treatment of orders of the same or other Participants entered into the OTTO Ports via a separate and distinct Client Application. The proposed amendments for OTTO mirror the manner in which FIX Ports are treated when the Exchange's server does not receive a Heartbeat message for a certain time period for a FIX Port.[11]

Pricing

BX proposes to amend its Pricing Schedule at Options 7, Section 3, BX Options Market—Ports and other Services, to assess a port fee for the new OTTO protocol.

The Exchange proposes to assess an OTTO Port Fee of $650 per port, per month, per account number. OTTO would be an additional order entry protocol for BX Participants in addition to FIX, which is currently utilized by BX Participants to enter orders into BX. The Exchange currently assesses a FIX Port Fee of $650 per port, per month, per account number.[12] Only one FIX order protocol is required for a BX Participant to submit orders into BX and to meet its regulatory requirements.[13] The Exchange will provide each Participant the first FIX Port at no cost to submit orders into BX. Only one account number is necessary to transact an options business on BX and account numbers are available to Participants at no cost.

Only BX Participants may utilize ports on BX. Any market participant that sends orders to a Participant would not need to utilize a port. The BX Participant can send all orders, proprietary and agency, through one port to BX. Participants may elect to obtain multiple account numbers to organize their business, however only one account number and one port for orders is necessary for a BX Participant to trade on BX. All other order entry ports offered by BX are not required for a BX Participant to meet its regulatory obligations. BX Participants utilizing the first FIX Port offered at no cost do not need to purchase an OTTO Port to meet their regulatory obligations.

Further, while only one FIX protocol is necessary to submit orders into BX, Participants may choose to purchase a greater number of order entry ports, depending on their business model.[14] To the extent that Participants chose to utilize more than one FIX Port, the Participant would be assessed $650 per port, per month, per account number for each subsequent port beyond the first port.

The Exchange also proposes to add OTTO and Disaster Recovery Ports to the list of ports that are capped at $7,500 on BX. The Exchange notes that BX currently does not assess BX Participants for Disaster Recovery Ports.[15] Today, the maximum monthly fees in the aggregate for FIX Port, CTI Port, FIX DROP Port, BX Depth Port and BX TOP Port Fees on BX is $7,500.[16] These ports are available to all BX Participants. For example, to the extent that a Participant expended more than $7,500 for FIX or OTTO Ports, BX would not charge a Participant for additional FIX or OTTO Ports, respectively, beyond the cap.

Only one FIX order protocol is required for a BX Participant to submit orders into BX and to meet its regulatory requirements.[17] The Exchange will provide each Participant the first FIX Port at no cost to submit orders into BX. Only one account number is necessary to transact an options business on BX and account numbers are available to Participants at no cost. Both FIX and OTTO ports are not necessary to conduct business on BX; a Participant may choose among protocols based on their business workflow. The Exchange's proposal to offer the first FIX Port at no cost would allow BX Participants to submit orders and quotes into BX at no cost while meeting their regulatory obligations.

The proposed fee for BX OTTO is identical to the fee offered for OTTO, an identical protocol, on MRX.[18] MRX offers one free FIX Port to its Members and assesses the same FIX Port fee of $650 per port, per month, per account number as BX assessed today for FIX.[19] MRX also offers one free FIX Disaster Recovery Port.[20] Today, BX does not assess Disaster Recovery Port fees.[21] Finally, today, MRX offers a $7,500 monthly cap for OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and all Disaster Recovery Ports.[22] BX's proposed monthly cap is $7,500 and includes the same ports as MRX, with the exception of BX Depth Ports and BX Top Ports.[23] BX Depth Ports and BX Top Ports are assessed fees of $650 per port, per month. Therefore, BX's proposed cap can also be obtained utilizing BX Depth Port and BX Top Port in addition to the same ports that MRX aggregates for purposes of the monthly cap.

Implementation

The Exchange will implement this rule change on or before December 20, 2025. The Exchange will announce the operative date to Participants in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5) of the Act,[25] 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. Additionally, the Exchange believes that its proposal furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[26] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

OTTO Protocol

The Exchange's proposal to adopt OTTO is consistent with the Act because OTTO would provide BX Participants with an alternative protocol to submit orders to the Exchange. As proposed, BX would offer the first OTTO Port at no cost to submit orders into BX, which would remove impediments to and perfect the mechanism of a free and open market.

[11] The Exchange proposes to update internal cross-references to accommodate relocated text.

[12] The term ''account number'' means a number assigned to a Participant. Participants may have more than one account number. *See* Options 1, Section 1(a)(2). Account numbers are free on BX.

[13] BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations.

[14] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

[15] *See* BX Options 7, Section 3.

[16] *See* BX Options 7, Section 3(i).

[17] BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations.

[18] *See* Securities Exchange Act Release No. 96824 (February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6). At the time SR–MRX–2023–05 was filed, MRX had a market share of 1.62%. The Exchange notes that BX's market share is 3.27%.

[19] *See* MRX Options 7, Section 6(i).

[20] *See* MRX Options 7, Section 6(i).

[21] *See* BX Options 7, Section 3.

[22] *See* MRX Options 7, Section 6.

[23] BX proposes to add OTTO and Disaster Recovery Ports to its current monthly cap. The Exchange notes that BX does not assess fees for Disaster Recovery Ports.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *See* 15 U.S.C. 78f(b)(4) and (5).

While BX Participants may elect to obtain multiple ports to organize their business,[27] only one order port is necessary for a Participant to enter orders on BX. A BX Participant may send all orders, proprietary and agency, through one port to BX without incurring any cost with this proposal. In the alternative, BX Participants may elect to obtain multiple ports to organize their business.[28]

With the addition of OTTO, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. Each BX Participant would receive one OTTO Port at no cost, thereby promoting just and equitable principles of trade. The Exchange notes that Participants may prefer one order protocol as compared to another order protocol, for example, the ability to route an order may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may utilize OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior. With this proposal, BX Participant may organize their business as they chose with the ability to send orders to BX at no cost. The proposed new OTTO protocol is identical to the OTTO protocol offered today on ISE, GEMX, MRX.

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized. IOC Orders may be entered through FIX, OTTO or SQF. A Day order may be entered through FIX or OTTO. A GTC order may only be entered through FIX. A Public Customer-to-Public Customer Cross Order may be entered through FIX or OTTO. Other processes such the Opening Cancel Timer would impact FIX and OTTO equally.

The Exchange's proposal to amend the Kill Switch at Options 3, Section 17 to align its rule text in proposed Options 3, Section 17(a) and (a)(2) with MRX's Options 3, Section 17 is consistent with the Act because it does not substantively amend the functionality beyond removing the group level cancel capability. The Exchange's proposal to amend proposed Options 3, Section 17(a)(2) to specify that FIX and OTTO orders may be cancelled is consistent with the Act as it will make clear that all orders entered on BX may be purged through the Kill Switch. Finally, allowing BX Participants to send a mass purge request through FIX or OTTO, in lieu of an interface, is consistent with Act and the protection of investors and the general public because it will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface. Further, utilizing the order protocols directly, in lieu of the interface, will align the Kill Switch functionality to that of ISE, GEMX and MRX. When initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only because the purge will be specific to a FIX or OTTO user for these ports.

Finally, the Detection of Loss of Communication would apply equally to FIX and OTTO. The Exchange believes that its proposal is consistent with the Act and protects investors as the Exchange is making clear what types of order types and other mechanisms may utilize OTTO. Today, BX Participants utilize FIX to enter their orders. Despite the fact that OTTO would not be available for the GTC Time-In-Force modifier, the Exchange notes that one OTTO Port is being provided to Participants at no cost. Today, FIX is the only manner in which to enter orders into BX.

Pricing

Proposed Port Fees Are Reasonable, Equitable and Not Unfairly Discriminatory

Only one FIX order protocol is required for a BX Participant to submit orders into BX and to meet its regulatory requirements [29] at no cost while meeting its regulatory requirements. The Exchange will provide each Participant the first FIX Port at no cost to submit orders into BX. Only one account number is necessary to transact an options business on BX and account numbers are available to Participants at no cost.

The Exchange proposes to offer each Participant the first FIX Port at no cost to meet their regulatory requirements. As noted above, Participants may freely choose to rely on one or many ports, depending on their business model.

The Exchange's proposal is reasonable, equitable and not unfairly discriminatory as BX is providing BX Participants the first FIX Port to submit orders at no cost. These ports, which are offered at no cost, would allow a BX Participant to meet its regulatory requirements. All other ports offered by BX are not required for a BX Participant to meet its regulatory obligations. Therefore, for the foregoing reasons, it is reasonable to assess no fee for the first FIX Port obtained by a Participant as a BX Participant is able to meet its regulatory requirements with these ports. Additionally, the proposal offers a free FIX Port to BX Participants that already subscribe to FIX, thereby reducing fees for these market participants.

Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Port to Participants as all BX Participants would be entitled to the first FIX Port at no cost. With this proposal, BX Participants may organize their business in such a way as to submit orders to BX at no cost.

The Exchange's proposal to assess $650 per port, per month, per account number for an OTTO Port is reasonable because OTTO is not required for a Participant to meet its regulatory requirements. The Exchange is offering the first FIX Port at no cost to submit orders to BX. In addition to the FIX Port, all Participants may elect to purchase OTTO to submit orders to BX. BX Participants utilizing the FIX Port, which is offered at no cost, do not need to utilize OTTO.

Finally, in the event that a BX Participant elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Participant would be assessed no additional fees for the month and proposes to add OTTO to the monthly cap. BX proposes to cap FIX Port, OTTO Port, CTI Port, FIX Drop Port, BX Depth Port, BX TOP Port Fees, and all Disaster Recovery Port Fees [30] at a monthly cap of $7,500. These caps are reasonable because they allow Participants to limit their fees beyond a certain level if they elect to purchase multiple ports in a given month. The caps are also equitable and not unfairly discriminatory because any Participant will be subject to the cap, provided they exceeded the appropriate dollar amount in a given month. These ports are available to all BX Participants.

[27] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

[28] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

[29] BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. *See* Rule 611 of Regulation NMS; 17 CFR 242.611 and FINRA Rule 5310.

[30] BX does not assess fees for Disaster Recovery Ports.

The proposed BX OTTO fee is the same as the OTTO Port fee on MRX, for the identical port. Additionally, MRX offers one free FIX Port to its Members and assesses the same FIX Port fee of $650 per port, per month, per account number as BX assesses today for a FIX Port. MRX offers its Members a free FIX Disaster Recovery Port.[31] Today, BX does not assess Disaster Recovery Port fees.[32] Finally, today, MRX offers a $7,500 monthly cap for OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and all Disaster Recovery Ports.[33] BX's proposed monthly cap includes BX Depth Ports and BX Top Ports, which are currently assessed fees of $650 per port, per month, in addition to the same ports that are capped on MRX (FIX Ports, OTTO Ports, CTI Ports, FIX DROP Ports, and all Disaster Recovery Ports).

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 OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants. If BX were unable to offer and price new protocols, it would result in an undue burden on competition as BX would not have the ability to innovate and modernize its technology to compete effectively in the options space. BX's ability to offer OTTO will enable it to compete with other options markets that provide its market participants a choice as to the type of order entry protocols that may be utilized. BX's ability to offer and price new and innovative products and continue to modernize its technology, similar to other options markets, supports intermarket competition.

OTTO Protocol

The Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intramarket competition. Today, all BX Participants utilize FIX to send orders to BX. The Exchange would offer each BX Participant the first FIX Port at no cost with this proposal. With the addition of OTTO Ports, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. The Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intermarket competition as other options exchanges offer multiple protocols today such as ISE, GEMX and MRX.

Other Amendments

The Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intramarket competition as these rules will apply in the same manner to all Participants. The Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intermarket competition as other options exchanges may elect to utilize their order entry protocols in different ways.

Pricing

Nothing in the proposal burdens inter-market competition because BX's proposal to offer the first FIX Port for free is similar to MRX's FIX Port offering and allows BX Participants to meet their regulatory obligations. BX's offering would permit Participants the ability to submit orders to BX at no cost. OTTO Ports are not required for BX Participants to meet their regulatory obligations.

Nothing in the proposal burdens intra-market competition because the Exchange would uniformly assess the port fees to all Participants, as applicable, and would uniformly apply monthly caps. The proposed fees are identical to fees recently approved on MRX.[34] The proposed BX OTTO fee is the same as the OTTO Port fee on MRX, for the identical port. Additionally, MRX offers one free FIX Port to its Members and assesses the same FIX Port fee of $650 per port, per month, per account number as BX assessed today for FIX.[35] MRX also offers a free FIX Disaster Recovery Port.[36] Today, BX does not assess Disaster Recovery Port fees.[37] Finally, today, MRX offers a $7,500 monthly cap for OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and all Disaster Recovery Ports.[38] BX's proposed monthly cap includes BX Depth Ports and BX Top Ports, which are assessed fees of $650 per port, per month, in addition to the same ports that are capped on MRX (FIX Ports, OTTO Ports, CTI Ports, FIX DROP Ports, and all Disaster Recovery Ports).

To the extent that the Commission does not permit BX to assess the same identical fees for the same identical products on its market, the Commission is creating a burden on competition by allowing MRX to assess fees and offer a product that would otherwise be unavailable on BX. Additionally, the proposal offers a free FIX Port to BX Participants that already subscribe to FIX, the only order port currently offered on BX, thereby reducing fees for these market participants. Each SRO should be permitted to mirror fees assessed by another SRO to further competition among the exchanges.

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.

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[39] and subparagraph (f)(6) of Rule 19b–4 thereunder.[40]

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.

[31] *See* MRX Options 7, Section 6.

[32] *See* BX Options 7, Section 3.

[33] *See* MRX Options 7, Section 6.

[34] *See* Securities Exchange Commission Release No. 96824 (February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05).

[35] *See* MRX Options 7, Section 6.

[36] Id,

[37] *See* BX Options 7, Section 3. BX is adding Disaster Recovery Ports to its monthly cap.

[38] *See* MRX Options 7, Section 6.

[39] 15 U.S.C. 78s(b)(3)(A)(iii).

[40] 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.

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–BX–2024–019 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–BX–2024–019. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–BX–2024–019 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15410 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100473; File No. SR–CboeBZX–2024–055]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f)

July 9, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2024, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to exempt closed-end management investment companies registered under the Investment Company Act of 1940 from the annual meeting of shareholders requirement set forth in Exchange Rule 14.10(f). On July 2, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 replaced and superseded the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to exempt closed-end management investment companies registered under the Investment Company Act of 1940 from the annual meeting of Shareholders requirement set forth in Exchange Rule 14.10(f). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

This Amendment No. 1 to SR–CboeBZX–2024–055 amends and replaces in its entirety the proposal as originally submitted on June 25, 2024. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

Exchange Rule 14.10(f) requires that each Company[3] listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders[4] no later than one year after the end of the Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of Rule 14.10(e)(1)(D)(iii). Now, the Exchange is proposing to exempt closed-end management investment companies registered under the Investment Company Act of 1940 (''Closed-End Funds'') from the requirements of Rule 14.10(f). The annual meeting requirement applicable to Closed-End Funds originates only from exchange listing rules and is not otherwise required under the Investment Company Act of 1940 (''1940 Act'') or applicable state laws. Furthermore, under Exchange Rules Closed-End Funds are the only registered investment companies that

[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 14.1(a)(3).

[4] ''Shareholder'' mans a record or beneficial owner of a security listed or applying to list. *See* Exchange Rule 14.1(a)(28).

are required to hold annual Shareholder meetings. The Exchange believes that the burdens of the annual meeting requirement on Closed-End Funds outweigh the benefits, and as discussed more fully below, the Exchange believes that other provisions of the 1940 Act preserve Shareholder interests that the annual meeting requirement is intended to protect.

Background

Generally, the main purpose of an annual meeting is to allow Shareholders to elect the directors who are responsible for the oversight of the company and its strategic direction. The annual meeting requirement dates back to 1909 and derives from a provision included in individually negotiated listing agreements on New York Stock Exchange (''NYSE'').[5] NYSE began listing investment companies in 1929, by which time the annual Shareholder meeting requirement was enmeshed in its listing rules and therefore also applied to investment companies. Since that time, the annual meeting requirement has been memorialized across all listing exchange rules applicable to Closed-End Funds, including Exchange Rules.[6]

The listing rules of exchanges, including the Exchange, are the only authority that require listed Closed-End Funds to hold annual shareholder meetings. As such, the Exchange proposes to eliminate such requirement for the reasons set forth below.

1. 1940 Act

Although the annual Shareholder meeting requirement dates back to 1909, the requirement was not memorialized in the 1940 Act. The 1940 Act is generally designed to protect the interests of Shareholders with respect to all critical aspects of the structure and operation of a fund. Nonetheless, when Congress considered requiring that registered investment companies hold annual meetings it declined to adopt the requirement.[7]

While the 1940 Act does not require an annual Shareholder meeting, it otherwise provides various mechanisms designed to protect the interest of Closed-End Fund Shareholder interests.

a. 1940 Act Preserves Shareholders' Ability To Elect Directors

Like other types of corporations, trusts, or partnerships, an investment company must be operated for the benefit of its owners. Unlike most business organizations, however, investment companies are typically organized and operated by an investment adviser that is responsible for the day-to-day operations of the fund. In most cases, the investment adviser is separate and distinct from the fund it advises, with primary responsibility and loyalty to its own Shareholders. Because the structure of a fund differs from a company, the board of directors plays an important role in fund governance by overseeing the performance of service providers that run the fund's day-to-day operations (including the fund's adviser) and monitoring for potential conflicts of interests.

The 1940 Act protects Closed-End Fund Shareholders by preserving their ability to elect directors who are responsible for the oversight of the fund. Specifically, the 1940 Act requires a Closed-End Fund to hold a Shareholder meeting in two instances: (1) to elect the initial board of directors; and (2) to fill all existing vacancies on the board if Shareholders have elected less than a majority of the board. Further, the 1940 Act requires that Shareholders fill any director vacancies if they have elected less than two-thirds of the directors holding office.[8]

The Exchange believes these provisions are designed to provide Shareholders with a say on fund management while also protecting Shareholders from ceding control of an investment company to a new board without any Shareholder notice or action. Through these requirements, the Exchange believes the 1940 Act ensures that fund Shareholders retain the direct ability to meet and determine important corporate governance decisions when, as Congress determined, they are appropriate. In the Exchange's view, this reflects an important distinction from operating companies, who are not subject to these requirements under the 1940 Act, and whose Shareholders do not have these rights under federal securities laws.

b. 1940 Act Requires Independent Directors To Approve Significant Actions

Given the structure of investment companies, conflicts of interest can arise because the interest of the investment adviser is to maximize its own profits for the benefit of its owners, which may conflict with its duty to act in the best interests of the investment company and its Shareholders. Therefore, the board of directors, and particularly ''independent directors'' [9] play a critical role in policing potential conflicts of interest between the investment company and its investment adviser and affiliates. The 1940 Act requires at least 40 percent of the board of directors be comprised of independent directors.[10] However, certain exemptive rules upon which Closed-End Funds frequently rely require that a fund's board have at least a majority of independent directors.[11]

To further protect Shareholder interests, the 1940 Act also requires that a majority of independent directors approve significant actions, especially those that involve a potential conflict of interest such as approval of the investment advisory agreement between

[5] *See* Special Study Group of the Committee on Federal Regulation of Securities, ABA Section of Business Law, Special Study on Market Structure, Listing Standards and Corporate Governance, 57 Bus. Law. 1487, 1497 (2002).

[6] The Exchange adopted listing standards for Closed-End Funds in 2018, which were based on existing criteria applicable to Closed-End Funds listed on NYSE American LLC (''NYSE American''). *See* Securities Exchange Act Nos. 83596 (July 5, 2018) 83 FR 32162 (July 11, 2018) (SR–CboeBZX–2018–047) (Notice of Filing of a Proposed Rule Change To Amend BZX Rule 14.8, General Listings Requirements—Tier I); 84377 (October 5, 2018) 83 FR 51747 (October 12, 2018) (Notice of Filing of Amendment Nos. 2 and 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 4, To Amend BZX Rule 14.8, General Listings Requirements—Tier I, To Adopt Listing Standards for Closed-End Funds).

[7] *See* Investment Trusts and Investment Companies: Hearings on H.R. 10065 Before the House Subcomm. on Interstate and Foreign Commerce, 76th Cong., 3d Sess. 43 (1940) at 502 (testimony of Merrill Griswold, Chairman, Massachusetts Investors Trust of Boston) (noting that the initial bill proposed to give shareholders the right to elect directors at annual meetings). Commission staff also later confirmed that the 1940 Act does not impose a requirement to hold annual meetings in a 1986 no-action letter. *See* John Nuveen & Co. Inc. (pub. avail. Nov. 18, 1986). The letter took the position that the necessity for annual meetings was generally a question of state law.

[8] *See* Section 16(a) of the 1940 Act.

[9] An independent director is a person other than an ''interested person'' as defined in Section 2(a)(19) of the 1940 Act. In general, under the 1940 Act, an independent director cannot currently have, or at any time during the previous two years have had, as significant business relationship with the fund's adviser, principal underwriter (distributor), or affiliates. An independent director also cannot own any stock of the investment adviser or certain related entities, such as parent companies or subsidiaries.

[10] *See* Section 10(a) of the 1940 Act.

[11] *See* 1940 Act Rule 10f–3 (permitting a fund to participate in an offering when an affiliated broker-dealer is part of the underwriting syndicate); 1940 Act Rule 15a–4(b)(2) (permitting a fund to enter into an interim advisory contract without shareholder approval following a change in control of the adviser); 1940 Act Rule 17a–7 (permitting a fund to engage in cross-trades with affiliates); 1940 Act Rule 17a–8 (permitting mergers between affiliated funds without shareholder approval); 1940 Act Rule 17d–1(d)(7) (permitting a fund to share joint insurance policies with affiliates); 1940 Act Rule 17e–1 (permitting a fund to pay commissions to affiliated brokers); 1940 Act Rule 17g–1(j) (permitting a fund to share a joint fidelity bond with affiliates); and 1940 Act Rule 23c–3 (permitting a closed-end fund to periodically repurchase shares from investors). *See also* Rule 0–1(7) under the 1940 Act.

a fund and its investment adviser.[12] Specifically, the following types of actions require approval of a majority of a fund's independent directors:

- Approval of advisory agreement (Section 15);
- Approval of underwriting agreement (Section 15);
- Selection of independent public accountant (Section 32);
- Acquisition of securities by a fund from an underwriting syndicate of which the fund's adviser or certain other affiliates are members (Rule 10f–3(h));
- The purchase or sale of securities between investment companies that have the same investment adviser (Rule 17a–7(e));
- Mergers or asset acquisitions involving investment companies that have the same investment adviser (Rule 17a–8(a));
- Use of an affiliated broker-dealer to effect portfolio transactions on a national securities exchange (Rule 17e–1(b)); and
- Approval of the fund's fidelity bond coverage (Rule 17g–1(d)).

The Exchange notes that in in certain circumstances the SEC has observed independent directors can provide greater protection to Shareholders than an annual shareholder vote. For example, when the SEC adopted Rule 32a–4 under the 1940 Act to allow a fund to avoid seeking ratification of the fund's independent public accountant at annual meetings it stated: [13]

Section 32(a)(2) of the Act requires that the selection of a fund's independent public accountant be submitted to shareholders for ratification or rejection. New rule 32a-4 exempts a fund from this requirement if the fund has an audit committee consisting entirely of independent directors to oversee the fund's auditor. The new rule could provide significant benefits to shareholders. Many believe shareholder ratification of a fund's independent auditor has become a perfunctory process, with votes that are rarely contested. As a consequence, we believe that the ongoing oversight provided by an independent audit committee can provide greater protection to shareholders than shareholder ratification of the choice of auditor.

[12] *See* Section 15 of the 1940 Act.

[13] *See* Section 10(a) of the 1940 Act; Role of Independent Directors of Investment Companies, SEC Release No. IC–24816 (Jan. 2, 2001), available at *https://www.sec.gov/rules/final/34-43786.htm* (''2001 Release'').

c. The 1940 Act Requires a Shareholder Vote on Material Governance and Policy Changes

In addition to Shareholder vote requirements for approving certain measures, the 1940 Act further protects Shareholders by explicitly requiring investment companies to obtain Shareholder approval for most material governance or policy changes. Specifically, the following types of changes require Shareholder approval:

- A new investment management agreement or a material amendment to an investment management agreement (Section 15);
- A change from closed-end to open-end status, or vice versa (Section 13);
- A change from diversified company to non-diversified company (Section 13);
- A change in a policy with respect to borrowing money, issuing senior securities, underwriting securities that other persons issue, purchasing or selling real estate or commodities or making loans to other persons, except in each case in accordance with the recitals of policy contained in its registration statement in respect thereto (Section 13);
- A deviation from a policy in respect of concentration of investments in any particular industry or fundamental investment policy (Section 13); and
- A change in the nature of the investment company's business so as to cease to be an investment company (Section 13).

The 1940 Act Shareholder vote to approve such changes requires the following:

. . . The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.[14]

Given this, the voting standard under (A) above requires the fund to meet a de facto quorum of at least 50 percent of all outstanding shares to even hold the vote, and to pass the vote the fund must receive an affirmative vote of 67 percent of the shares present. Alternatively, the standard under (B) above requires a majority of all outstanding voting securities. The Exchange believes the voting standard for investment companies is thus higher than most standard operating companies and illustrates the 1940 Act's strong protections for Shareholders.

[14] *See* Section 2(a)(42) of the 1940 Act.

d. Exchange-Listed Closed-End Funds Are the Only Registered Investment Companies That Are Required To Hold Annual Shareholder Meetings

Closed-End Funds are the only form of registered investment company listed on the Exchange required to hold annual Shareholder meetings under Exchange Rules. Specifically, the Exchange recently changed its rules to provide that Derivative Securities [15] listed on the Exchange are exempt from the annual Shareholder meeting requirement.[16] Thus, while exchange-listed Closed-End Funds are subject to the requirements discussed above and their Shareholders benefit from the protections and reports that the 1940 Act mandates, they are the only form of registered investment company required to hold annual Shareholder meetings because of Exchange rules.

Proposal

Rule 14.10(e) provides for the exemptions from the corporate governance rules afforded to certain types of companies. Specifically, Rule 14.10(e)(1)(E) sets forth exemptions from the corporate governance rules specifically applicable to management investment companies. The Exchange proposes to adopt Rule 14.10(e)(1)(E)(iv) which would provide that management investment companies that are Closed-End Funds, as defined in Rule 14.8(a), are exempt from the requirements relating to Meetings of Shareholders (as

[15] Rule 14.10(e)(1)(F)(ii) provides that ''Derivative Securities'' is defined as the following: Commodity Futures Trust Shares (Rule 14.11(e)(7)), Commodity Index Trust Shares (Rule 14.11(e)(6)), Commodity-Based Trust Shares (Rule 14.11(e)(4)), Commodity-Linked Securities (Rule 14.11(d)(K)(ii)), Currency Trust Shares (Rule 14.11(e)(5)), Equity Gold Shares (Rule 14.11(e)(2), Equity Index-Linked Securities (Rule 14.11(d)(K)(i)), ETF Shares (Rule 14.11(l)), Fixed Income Index-Linked Securities (Rule 14.11(d)(K)(iii)), Futures-Linked Securities (Rule 14.11(d)(K)(iv)), Index Fund Shares (Rule 14.11(c)), Index-Linked Exchangeable Notes (Rule 14.11(e)(1), Managed Fund Shares (Rule 14.11(i)), Managed Portfolio Shares (Rule 14.11(k)), Managed Trust Securities (Rule 14.11(e)(10)), Multifactor Index-Linked Securities (Rule 14.11(d)(K)(v)), Partnership Units (Rule 14.11(e)(8)), Portfolio Depository Receipts (Rule 14.11(b)), SEEDS (Rule 14.11(e)(12)), Tracking Fund Shares (Rule 14.11(m)), Trust Certificates (Rule 14.11(e)(3), and Trust Issued Receipts (Rule 14.11(f)). Derivative Securities are currently the only products registered under the 1940 Act that are listed on the Exchange. There are currently no Closed-End Funds listed on the Exchange.

[16] *See* Securities Exchange Act Release No. 99524 (February 13, 2024) 89 FR 12919 (February 20, 2024) (SR–CboeBZX–2024–010).

set forth in Rule 14.10(f)). The Exchange also proposes to amend Interpretation and Policy .13 (Management Investment Companies) and .15 (Meetings of Shareholders or Partners) to reiterate that that Closed-End Funds are exempt from the Meetings of Shareholders requirement under Rule 14.10(f).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Exchange Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] 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 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 proposal protects investors and the public interest because it exempts Closed-End Funds from the burdensome annual Shareholder meeting requirement, which the Exchange believes is unnecessary given the investor protections afforded under the 1940 Act. Specifically, the Exchange believes that because the 1940 Act preserves Shareholder ability to elect Directors, requires Independent Directors to approve significant actions, and requires a Shareholder vote on material governance and policy changes, the Exchange's requirement to hold an annual Shareholder meeting is unnecessary. The Exchange further believes that because no other registered investment companies listed on the Exchange are required to hold an annual Shareholder meeting, there is not a compelling reason for Closed-End Funds to be subject to such a requirement.

The Exchange also believes amending Rule 14.10 to explicitly provide that Closed-End Funds are exempt from the annual Shareholder meeting requirement are designed to promote transparency and clarity in the Exchange's Rules. The Exchange believes that with these changes, Rule 14.10 would clearly provide that Closed-End Funds are exempt from the annual Shareholder meeting requirements required under Rule 14.10(f).

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 Exchange Act. The purpose of the proposal is to eliminate the burdensome and unnecessary annual Shareholder meeting requirement for Closed-End Funds and would apply equally to all similarly situated funds listed on the Exchange. Other listing venues can adopt similar rules if they so desire. As such, the Exchange does not believe that the proposal imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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, as modified by Amendment No. 1, 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–CboeBZX–2024–055 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–CboeBZX–2024–055. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–CboeBZX–2024–055 and should be submitted on or before August 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15404 Filed 7–12–24; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20417 and #20418; OKLAHOMA Disaster Number OK–20007]

Administrative Declaration of a Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Oklahoma dated 07/03/2024.

Incident: Heavy Rain and Flooding.

Incident Period: 06/18/2024 through 06/21/2024.

DATES: Issued on 07/03/2024.

Physical Loan Application Deadline Date: 09/03/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 04/03/2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Texas

Contiguous Counties:

Oklahoma: Beaver, Cimarron

Kansas: Stevens, Morton, Seward

Texas: Sherman, Hansford, Ochiltree

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 20417B and for economic injury is 204180.

The States which received an EIDL Declaration are Kansas, Oklahoma, Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–15380 Filed 7–12–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before August 14, 2024.

ADDRESSES: Send all comments to Gregorius Suryadi, Senior Financial and Loan Specialist, Office of Financial Assistance, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gregorius Suryadi, Senior Financial and Loan Specialist, 202–205–6806, *gregorius.suryadi@sba.gov* or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Investment Act authorizes SBA to guarantee a debenture issued by a Certified Development Company (CDC). The proceeds from each debenture are used to fund loans to eligible small business concerns (''504 loans''). 15 U.S.C. 697(a). The Small Business Act and the Small Business Investment Act mandate that all guaranteed loans provided by the SBA to small business concerns (SBCs) must have a reasonable assurance of ability to repay. See 15 U.S.C. 636(a) (6) and 687(f); see also 13 CFR 120.150. The information collections described below—SBA Form 1244 is part of the application process for a 504 loan. SBA issued Information Notice under control number 5000–20056 on September 30,2020 for the retirement of Form 2450.

Additionally, in accordance to the National Defense Authorization Act (NDAA)/Small Business Runway Extension Act (SBREA) for Fiscal Year 2022 rule, the SBA will use its administrative discretion to permit loan applicants to choose between 3 years and 5 years for receipts-based size standards, and from 12 months to 24 months for employee-based size standards. (15 U.S.C. 632(a)(2))

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Application for Section 504 Loans.

Form Number: SBA Form 1244.

Description of Respondents: Small Business Concerns applying for a section 504 loan and Certified Development Companies.

The information collected by this form is used to review the eligibility of the small business concern (SBC) for SBA financial assistance; the creditworthiness and repayment ability of the SBC; and the terms and conditions of the 504 loan for which the SBC is applying.

SBA has established a streamlined loan application processing procedure known as the Abridged Submission Method (ASM). Under this process, the CDCs are required to collect and retain all exhibits to SBA Form 1244 but are only required to submit selective documents. CDCs using the non-ASM method are required to submit all documents and exhibits required for Form 1244.

The burden estimates (based on the experience of the CDCs and SBA field offices) of the burden hours imposed by use of these forms, including exhibits, are as follows:

There are 200 CDCs affected by the information collection. The total number of small business concerns that will annually respond to Form 1244 is approximately 7,119 based on the average submission of applications submitted from CDCs over the past FY using both the ASM and non-ASM methods. This is a total of 7,119 respondents. Burden hours are 2.25 hours for PCLP Loan and ALP Express Loan, 2.5 hours for ASM, and 3.5 hours for non-ASM submissions.

Submission through delegated authority: $15 \times 2.25 = 34$ burden hours.

Submission through the ASM: 5,695 × 2.5 = 14,238 burden hours.

Submission through non-ASM (standard method): 1,409 × 3.5 = 4,932 burden hours.

Total burden hours: 19,204.

OMB Control Number: 3245–0071.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–15442 Filed 7–12–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20331 and #20332; MICHIGAN Disaster Number MI–20013]

Administrative Declaration of a Disaster for the State of Michigan

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Michigan dated 07/08/2024.

Incident: Severe Storms and Tornadoes.

Incident Period: 05/07/2024.

DATES: Issued on 07/08/2024.

Physical Loan Application Deadline Date: 09/06/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 04/08/2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kalamazoo

Contiguous Counties:

Michigan: Allegan, Barry, Branch, Calhoun, Cass, St. Joseph, Van Buren

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 20331C and for economic injury is 203320.

The State which received an EIDL Declaration is Michigan.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–15381 Filed 7–12–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12460]

60-Day Notice of Proposed Information Collection: Statement Regarding a Valid Lost or Stolen U.S. Passport Book and/or Card

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to September 13, 2024.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2024–0024 in the Search field. Then click the ''Comment Now'' button and complete the comment form. Email and regular mail options have been suspended to centralize receiving and addressing all comments in a timely manner.

Email: Passport-Form-Comments@State.gov.

You must include the DS form number (if applicable), information collection title, and the OMB control number in the email subject line.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card.
- *OMB Control Number:* 1405–0014.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS–64.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 435,000.
- *Estimated Number of Responses:* 435,000.
- *Average Time Per Response:* 5 minutes.
- *Total Estimated Burden Time:* 36,250 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a *et seq.,* 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966).

Department regulations provide that individuals whose valid or potentially valid U.S. passports were lost or stolen must report the lost or stolen passport to the Department of State before receiving a new passport so that the lost or stolen passport can be invalidated (22 CFR parts 50 and 51). The Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1737) requires the Department of State to collect accurate information on lost or stolen U.S. passports and to enter that information into a data system. Form DS–64 collects information identifying the person who held the valid lost or stolen passport and describing the circumstances under which the passport was lost or stolen. As required by the cited authorities, we use the information collected to accurately identify the passport that must be invalidated and to make a record of the circumstances surrounding the lost or stolen passport.

Methodology

Passport bearers may submit the form on the Department of State's website, *www.travel.state.gov,* where it can be completed, signed, and submitted electronically. The DS–64 is also available at *eforms.state.gov* where it can be completed online and printed for signature and submission. Additionally, passport bearers have the option to call the National Passport Information Center (NPIC) at 1–877–487–2778 or mail in a hardcopy of the form. The form can be obtained at any passport agency or acceptance facility.

Amanda E. Smith,

Managing Director for Passport Support Operations, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2024–15421 Filed 7–12–24; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 12456]

Determination Under the Trade Act of 1974, as Amended Extension of Waiver Authority

Pursuant to the authority vested in the President under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter ''the Act''), and assigned to the Secretary of State by virtue of section 1(a) of Executive Order 13346 of July 8, 2004, and delegated by Department of State Delegation of Authority 513, of April 7, 2021, I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to Turkmenistan will substantially promote the objectives of section 402 of the Act.

This Determination shall be published in the **Federal Register**.

Dated: June 13, 2024.

Kurt M. Campbell,

Deputy Secretary of State.

[FR Doc. 2024–15471 Filed 7–12–24; 8:45 am]

BILLING CODE 4710–46–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 775]

Growth in the Freight Rail Industry

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on September 16 and 17, 2024, to gather information about recent trends and strategies for growth in the freight rail industry. The Board requests the attendance of executive-level officials from the BNSF Railway Company, Canadian National Railway Company, Canadian Pacific Kansas City Limited, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company (collectively, ''Class I railroads''). The Board also invites and welcomes testimony from industry analysts, other rail carriers, rail customers, rail suppliers, labor organizations, and other interested parties who can contribute to the Board's understanding of how the industry has grown and intends to grow in the future.

DATES: The hearing will be held on September 16 and 17, 2024, beginning at 9:30 a.m. ET each day, in the Hearing Room of the Board's headquarters and will be open for public observation. The hearing will also be available for public viewing on YouTube. Any person wishing to speak at the hearing must file with the Board a notice of intent to participate (identifying the party, proposed speaker, and amount of time requested) no later than August 14, 2024. In addition, written testimony from hearing participants, and written comments by any other interested persons, must be submitted by August 16, 2024

ADDRESSES: The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001. All filings must be submitted via e-filing on the Board's website at *www.stb.gov* under the docket for EP 775, or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. Filings will be posted to the Board's website and need not be served on the other hearing participants, written commenters, or any other party to the proceeding.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: Freight rail is critically important to the nation's economy, and the Board has an interest in the health and growth of the industry and the need for rail customers to move their goods efficiently and reliably. On the subject of freight rail industry growth, while the Board recognizes that some shifts in volume may not be primarily within the control of rail carriers, the Board has observed that over the past ten years carload volumes have not grown, and have in fact decreased.[1] The Board wishes to explore how industry participants are strategizing and innovating to reverse this recent trend and achieve freight rail growth. For example, the Board is interested in the Class I railroads' short-, medium-, and long-term growth strategies, including investments, across traffic types. The Board would also like the perspective of short line railroads, who can present evidence of their own growth strategies. The Board is also interested in shippers' plans or desire for future use of rail, factors that may affect their shipment decisions, and what rail carriers are doing and can do to increase shippers' use of rail. This hearing presents a chance to discuss the opportunities for growth in the freight rail industry, as well as the challenges and effects associated with a failure to grow.

The Board will hold a public hearing to explore these topics on September 16 and 17, 2024, beginning at 9:30 a.m. ET each day, at its headquarters in Washington, DC. In addition to requesting the attendance of executive-level officials from the Class I railroads, the Board invites and welcomes testimony from industry analysts, other rail carriers, rail customers, rail suppliers, labor organizations, and other interested parties. Participation at the hearing will be limited to those who file notices of intent to participate, and the

[1] *See* Federal Reserve Bank of St. Louis, Rail Freight Carloads, *https://fred.stlouisfed.org/series/RAILFRTCARLOADSD11* (last updated June 12, 2024) (data collected by U.S. Dep't of Transportation, Bureau of Transportation Statistics).

Board will, in a subsequent decision, provide time limits for each speaker.

Board Releases and Transcript Availability: Decisions and notices of the Board, including this notice, are available on the Board's website at *www.stb.gov*. The Board will issue a separate notice containing the schedule of appearances. A transcript of the hearing will be posted on the Board's website once it is available.

It is ordered:

1. A public hearing will be held on September 16 and 17, 2024, beginning at 9:30 a.m. ET each day, in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001.

2. By August 14, 2024, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate identifying the party, the proposed speaker(s), and the amount of time requested.

3. Written testimony from hearing participants and written comments from any other interested persons must be filed by August 16, 2024.

4. Filings will be posted to the Board's website and need not be served on any hearing participants or other commenters.

5. This decision is effective on its service date.

6. This decision will be published in the **Federal Register**.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024–15452 Filed 7–12–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA Docket number: FAA–2024–1987]

NextGen Advisory Committee; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the NextGen Advisory Committee (NAC).

DATES: The meeting will be held on August 22, 2024, from 10:00 a.m.–1:00 p.m. ET. Requests to attend the meeting virtually must be received by August 15, 2024. Requests for accommodations for a disability must be received by August 15, 2024. Written materials requested to be reviewed by NAC Members before the meeting must be received no later than August 15, 2024.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, with a virtual option. Virtual meeting information will be provided on the NAC internet website at least one week in advance of the meeting. Information on the NAC, including copies of previous meeting minutes, is available on the NAC internet website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/*. Members of the public who wish to observe the meeting virtually or in-person must send the required information listed in the **SUPPLEMENTARY INFORMATION** section to *9-AWA-ANG-NACRegistration@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Kimberly Noonan, NAC Coordinator, U.S. Department of Transportation, at *Kimberly.Noonan@faa.gov* or 202–267–3760. Any requests or questions not regarding attendance registration should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Transportation established the NAC under agency authority in accordance with the provisions of the Federal Advisory Committee Act, as amended, Public Law 92–463, 5 U.S.C. ch. 10, to provide independent advice and recommendations to the FAA and to respond to specific taskings received directly from the FAA. The NAC recommends consensus-driven advice for FAA consideration relating to Air Traffic Management System modernization.

II. Agenda

At the meeting, the agenda will cover the following topics:

- NAC Chair's Report
- FAA Report
- NAC Subcommittee Chair's Report
  - Risk and Mitigations update for the following focus areas: Data Communications, Performance Based Navigation, Surface and Data Sharing, and Northeast Corridor
  - Interim Report and Status Update on NAC Tasking 23–2: National Airspace System (NAS) Airspace Efficiencies
  - Interim Report and Status Update on NAC Tasking 23–3: En Route Data Communication: Joint Analysis Team Assessment
- NAC Chair Closing Comments

The detailed agenda will be posted on the NAC internet website at least one week in advance of the meeting.

III. Public Participation

The meeting is open to the public. Members of the public who wish to attend are asked to register via email by submitting their full legal name, country of citizenship, contact information (telephone number and email address), name of their industry association or applicable affiliation, and if they would like to attend the meeting in person or virtually. Please email this information to the email address listed in the **ADDRESSES** section. When registration is confirmed, registrants who requested to attend virtually will be provided the virtual meeting information/teleconference call-in number and passcode. Callers are responsible for paying associated long-distance charges (if any).

Note: Only NAC Members, NAC working group members, and FAA staff who are providing briefings will have the ability to speak. All other attendees will be able to listen only.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Any member of the public may present a written statement to the committee at any time. Written statements submitted by the deadline will be provided to the NAC members before the meeting. Written statements must be submitted to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Comments received after the due date listed in the **DATES** section will be distributed to the members but may not be reviewed prior to the meeting.

Signed in Washington, DC, this 9th day of July 2024.

Kimberly Noonan,

Manager, Office of Stakeholder Collaboration, Management Services Office, ANG–A, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2024–15430 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0052]

Agency Information Collection Activities: Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for reinstatement of a previously approved information collection.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to reinstate an information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 14, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0052 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Foundoukis, (785) 273–2655, Department of Transportation, Federal Highway Administration, Highway Systems Performance (HPPI–20), Office of Highway Policy Information, Office of Policy & Governmental Affairs, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 10, 2024, at [89 FR 40528]. The comments and FHWA's responses are below:

There were no comments received.

Title: Highway Performance Monitoring System (HPMS).

OMB Control: 2125–0028.

Background: The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides mile and lane-mile components of the Federal-Aid Highway Fund apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined by the FHWA. The process has recently been updated to enable the transactional submission of many data items, thereby reducing the need to submit redundant data each year.

Respondents: State governments of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Annually.

Estimated Average Burden per Response: The estimated average burden per response for the annual collection and processing of the HPMS data is 2,010 hours for each State, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden Hours: The estimated total annual burden for all respondents is 104,520 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 10, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–15445 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for the Fiscal Year 2021–2024 Restoration and Enhancement Grant Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO or Notice), Assistance Listing (formerly CFDA) #20.324.

SUMMARY: This Notice details the application requirements and procedures to obtain grant funding for eligible projects under the Restoration & Enhancement (R&E) Grant Program for Fiscal Years (FY) 2021–2024. This Notice solicits applications for the R&E Grant Program with funds made available by the following: Consolidated Appropriations Act, 2021, the Infrastructure Investment and Jobs Act (IIJA), and additional carryover funding from Consolidated Appropriations Act, 2019 and Further Consolidated Appropriations Act, 2020. The opportunity described in this Notice is made available under Assistance Listings Number 20.324, ''Restoration & Enhancement Grant Program.''

DATES: Applications for funding under this solicitation are due no later than 11:59 p.m. Eastern Time (ET), September 30, 2024. Applications for funding received after 11:59 p.m. ET on September 30, 2024 will not be considered for funding. Incomplete applications will not be considered for funding. Applications that do not adequately address the information requested may be considered incomplete. Adequacy of information provided will also be considered in evaluating the responsiveness to the evaluation criteria. See Section D of this Notice for additional information on the application and submission requirements and Section E of this Notice for additional information on review of applications.

ADDRESSES: Applications must be submitted via *www.Grants.gov.* Only applicants that comply with all submission requirements described in this Notice and submit applications through *www.Grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact the FRA NOFO Support program staff via email at *FRA-NOFO-Support@dot.gov.* If additional assistance is needed, you may contact Mr. Marc Dixon, Office of Rail Program Development, Federal Railroad

Administration, at email: *marc.dixon@dot.gov;* or telephone: 202–493–0614.

SUPPLEMENTARY INFORMATION:

Notice to applicants: FRA recommends that applicants read this Notice in its entirety prior to preparing application materials. Definitions of key terms used throughout the Notice are provided in Section A(3) below. These key terms are capitalized throughout the Notice. There are several administrative and specific eligibility requirements described herein with which applicants must comply.

Table of Contents

SUMMARY OVERVIEW OF KEY INFORMATION—RESTORATION & ENHANCEMENT GRANT PROGRAM (R&E PROGRAM)

Issuing Agency	U.S. Department of Transportation, Federal Railroad Administration (FRA).
Program Overview	The R&E Program provides grants for Initiating, Restoring, or Enhancing Intercity Rail Passenger Transportation operations.
Objective	The objective is to help offset initial operating losses while the new or expanded Intercity Rail Passenger Transportation Services build their ridership and Revenue base, since such Services and frequencies do not realize their longer-term ridership/Revenue potential immediately upon the start of operations.
Eligible Applicants	Eligible applicants include: 1. A State (including the District of Columbia); 2. A group of States; 3. An entity implementing an Interstate Rail Compact; 4. A public agency or publicly chartered authority established by one or more States; 5. A political subdivision of a State; 6. A federally recognized Indian Tribe; 7. Amtrak or another Rail Carrier that provides Intercity Rail Passenger Transportation; 8. Any Rail Carrier in partnership with at least one of the entities described in (1) through (6), consistent with 49 U.S.C. 22908(a)(1)(H); and 9. Any combination of the entities described in (1) through (6), consistent with 49 U.S.C. 22908(a)(1)(I).
Funding	This NOFO will provide R&E funding of $153,845,680 to provide financial assistance for projected Net Operating Costs. The R&E funding may not exceed the following for each Year of Service: • 90 percent for the first Year of Service; • 80 percent for the second Year of Service; • 70 percent for the third Year of Service; • 60 percent for the fourth Year of Service; • 50 percent for the fifth Year of Service; and, • 30 percent for the sixth Year of Service.
Deadline	Applications for funding under this solicitation are due no later than 11:59 p.m., ET September 30, 2024.

A. Program Description

1. Overview

The purpose of the R&E Grant Program (''Program'' or ''R&E Program'') is to provide financial assistance for Initiating, Restoring, or Enhancing Intercity Rail Passenger Transportation operations as authorized under 49 U.S.C. 22908. Funding for the Program under this NOFO is made available in the following: Consolidated Appropriations Act, 2021, Div. L, Tit. I, Public Law 116–260; IIJA, 2021, Public Law 117–58 (November 15, 2021); and carryover funding from Consolidated Appropriations Act, 2019, Div. G, Tit. I, Public Law 116–6 and Further Consolidated Appropriations Act, 2020, Div. H, Tit. I, Public Law 116–94. FRA will consider applications that are consistent with the priorities in 49 U.S.C. 22908(d). The opportunities described in this notice are made available under Assistance Listing 20.324, ''Restoration and Enhancement.''

The Program plays a vital role in the success of Intercity Passenger Rail Service by offsetting initial operating losses while the new or expanded Services build their ridership and Revenue base. As experienced around the world and on the Amtrak network, new Intercity Passenger Rail Service and frequencies do not realize their longer-term ridership/Revenue potential immediately upon Initiating operations. The R&E program provides the greatest support in the first years of operation, and as ridership and Revenue grows over the first six years of operations, R&E funding is gradually reduced.

The U.S. Department of Transportation (''USDOT'' or ''DOT'' or ''Department'') seeks to fund projects that advance the Administration Priorities (also known as USDOT Strategic Goals) of safety, equity, climate change and sustainability, workforce development, job quality, and wealth creation, as described in Section E as well as the USDOT Strategic Plan, Research, Development and Technology Strategic Plan [1] and in executive orders.[2]

Section E, which outlines the grant selection criteria, describes the process for selecting projects that further these goals. Section F(3) describes progress and performance reporting requirements for selected projects.

2. Changes From the FY 2018–2020 R&E Program NOFO

This section describes significant changes from the prior NOFO,[3]

[1] *https://www.transportation.gov/sites/dot.gov/files/2023-01/USDOT%20RDT%20Strategic%20Plan%20FY22-26_010523_508.pdf.*

[2] Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619)—*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/*; Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009)—*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/;* Executive Order 14025, Worker Organizing and Empowerment (86 FR 22829)—*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/26/executive-order-on-worker-organizing-and-empowerment/;* and Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335)—*https://www.govinfo.gov/content/pkg/FR-2021-11-18/pdf/2021-25286.pdf.*

[3] The FY 2018–2019 R&E NOFO and the amendment to add FY 2020 R&E funding is available on the FRA R&E Program website: *https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/restoration-and-enhancement-grant-program.*

including changes to 49 U.S.C. 22908 resulting from the Program's reauthorization in IIJA Section 22304, updated or changed definitions, changes to award limits for recipients of FY 2017–2020 R&E Program grants, and direction with respect to pre-award costs.

- The more substantive changes to 49 U.S.C. 22908 resulting from IIJA section 22304 include the following:
  - Definition of ''Applicant'' now includes a federally recognized Indian Tribe;
  - Definition of ''Operating Assistance'' added for Routes subject to section 209 of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432) (PRIIA);
  - Priorities include Routes selected under the Corridor Identification and Development Program and operated by Amtrak;
  - Funding plan requirements for initial capital and Operating Costs must now cover the first six years of operation, and, to the extent necessary, capital and Operating Costs after the first six years of operation;
  - Grant Award Term Limits are extended so R&E grants for any individual Route or Service may not provide funding for more than six years; and,
  - Maximum funding of projected Net Operating Costs may not exceed the following for each Year of Service: (1) 90 percent for the first Year of Service; (2) 80 percent for the second Year of Service; (3) 70 percent for the third Year of Service; (4) 60 percent for the fourth Year of Service; (5) 50 percent for the fifth Year of Service; and (6) 30 percent for the sixth Year of Service.
- FRA made changes to *Definitions of Key Terms* section, including but not limited to, updating ''Operating Assistance'' and ''Operating Costs,'' and adding terms such as ''Revenue,'' ''Route,'' ''Service,'' and ''Year of Service.''
- Prior R&E Program grant selections: Section B(2) describes award limits for projects selected under the FY 2017–2020 R&E Program. Section D(2)(a)(iii) provides direction to applicants for additional funding for the same Service on the same Route.
- Additional guidance on timing of incurrence of pre-award costs.
- Each applicant must include information that explains and supports its authority to undertake the operations activities in the proposed project, either by itself or through agreement, if selected for an award.
- Changes to applicability of written agreements required under 49 U.S.C. 22905(c)(1).

3. Definitions of Key Terms

Terms defined in this section are capitalized throughout this NOFO.

a. ''Commuter Rail Passenger Transportation'' means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple rides, and commuter tickets, and morning and evening peak period operations, consistent with 49 U.S.C. 24102(3); the term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

b. ''Enhancing'' or ''Enhance'' means upgrading or modifying the Service currently offered on an Intercity Rail Passenger Transportation Route or train. Examples include adding a station stop, increasing frequency of a train (*e.g.,* tri-weekly to daily train Service or increasing daily train Service frequencies), or modifying on-board Services offered on the train (*e.g.,* food or sleeping accommodations).

c. ''Initiating'' or ''Initiation'' or ''Initiate'' means commencing Service on an Intercity Rail Passenger Transportation Route that did not previously operate Intercity Rail Passenger Transportation.

d. ''Intercity Rail Passenger Transportation'' means rail passenger transportation, except Commuter Rail Passenger Transportation. See 49 U.S.C. 22901(3). In this NOFO, ''Intercity Passenger Rail Service'' and ''Intercity Passenger Rail Transportation'' are equivalent terms to ''Intercity Rail Passenger Transportation.''

e. ''Interstate Rail Compact'' means a legislatively enacted agreement or compact that establishes a formal, legally binding relationship between two or more States to prepare for and provide Intercity Passenger Rail Service.

f. ''Lifecycle Stage'' means each of the consecutive stages of a capital project as it is developed and implemented that includes Systems Planning, Project Planning, Project Development, Final Design, Construction, and Operation. Each sequential stage involves specific activities. Lifecycle Stages are further described in FRA's Guidance on Development and Implementation of Railroad Capital Projects (88 FR 2163, Jan. 12, 2023) which can be found here: *https://railroads.dot.gov/elibrary/fra-guidance-development-and-implementation-railroad-capital-project.*

g. ''National Environmental Policy Act'' or ''NEPA'' is a federal law that requires federal agencies to analyze and document the environmental impacts of a proposed action in consultation with appropriate federal, state, and local authorities, and with the public. NEPA classes of action include an Environmental Impact Statement (EIS), Environmental Analysis (EA) or Categorical Exclusion (CE). The NEPA class of action depends on the nature of the proposed action, its complexity, and the potential impacts. For purposes of this NOFO, NEPA also includes all related federal laws and regulations including the Clean Air Act, Section 4(f) of the Department of Transportation Act, Section 7 of the Endangered Species Act, and Section 106 of the National Historic Preservation Act. Additional information regarding FRA's environmental processes and requirements are located at *https://railroads.dot.gov/rail-network-development/environment/environment.*

h. ''Net Operating Cost(s)'' is defined as Operating Costs incurred minus Revenue for each Service on a Route.

i. ''Operating Assistance'' is defined in 49 U.S.C. 22908(a)(2), with respect to any Route subject to Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432) (PRIIA), as any cost allocated, or that may be allocated, to a Route pursuant to the cost methodology established under Section 209 of PRIIA or under 49 U.S.C. 24712, as described in the Section 209 policy approved by the State-Amtrak Intercity Passenger Rail Committee.[4] Such costs are equivalent to the Section 209 state responsibility or the operating cost obligation allocated to the state under the cost methodology policy.

j. ''Operating Costs'' means,

i. With respect to any Route subject to Section 209 of PRIIA, the Operating Assistance associated with the operation of the Service for each Year of Service. Eligible capital costs are limited to capital overhaul (*i.e.,* investment) costs for Amtrak-owned equipment in Service, including locomotives, cab cars, coaches, and food Service cars.

ii. With respect to Routes not subject to Section 209 of PRIIA, the expenses associated with the operation of the Service for each Year of Service. Examples of such expenses may include: staffing costs for train

[4] FRA understands the definition of ''Operating Assistance'' under 49 U.S.C. 22908(a)(2) as providing information about eligible Operating Costs for Routes that are subject to section 209. Therefore, for the purposes of this NOFO, FRA uses the term ''Operating Assistance'' in the definition of ''Operating Costs'' for Routes that are subject to section 209.

In addition, 49 U.S.C. 22908(b) uses the term ''Operating Assistance'' in authorizing the Secretary to ''develop and implement a program for issuing Operating Assistance grants to applicants.'' To avoid confusion, FRA does not use the term ''Operating Assistance'' elsewhere in this NOFO.

engineers, conductors, and on-board Service crew; diesel fuel or electricity costs associated with train propulsion power; station costs such as ticket sales, customer information, and train dispatching Services; station building utility and maintenance costs; lease payments on rolling stock; routine planned maintenance costs of equipment and train cleaning; host railroad access costs; train yard operation costs; general and administrative costs; and management, marketing, sales and reservations costs. Capital costs associated with equipment are not eligible expenses for Routes that are not subject to section 209 of PRIIA.

k. ''Revenue'' means the Revenue attributable to the Service, including but not limited to ticket Revenue and food and beverage Revenue, calculated annually for each Year of Service, consistent with the cost methodology policy required under section 209 PRIIA and further described in 49 U.S.C. 24712, unless otherwise agreed to by FRA and the applicant for Routes not subject to section 209 of PRIIA.

l. ''Rail Carrier'' means a person providing common carrier railroad transportation for compensation. See 49 U.S.C. 24102.

m. ''Restoring'' or ''Restore'' means reinstating Service to an Intercity Rail Passenger Transportation Route that formerly operated Intercity Rail Passenger Transportation.

n. ''Route'' means the point-to-point geographic location where a particular Service is being offered.

o. ''Service'' means the specific Enhancement activity or activities that are proposed to be funded under this NOFO, or the operation on the Route that is being Initiated or Restored with funding under this NOFO. Examples include: the addition of one or more frequencies or the addition of on-board Services to trains on a Route. Service does not include excursion train Services or short-term Services for the purpose of collecting data.

p. ''Year of Service'' means the 365-day period used for calculating the maximum funding under the Program as well as the period in which costs may be incurred to be eligible for reimbursement. The recipient may choose to start the first Year of Service at any point between the initial incurrence of cost for the Service (including start-up costs) and the first day of Revenue Service.

B. Federal Award Information

1. Available Award Amount

The total funding available for awards under this NOFO is $153,845,680.[5] Should additional R&E funds become available after the release of this NOFO, FRA may elect to award such funds to applications received under this NOFO.

The total amount in the previous paragraph includes funding from previous R&E Program years: $4,527,896 is available from the FY 2021 Appropriation; $145,395,000 is available from the FY 2022–2024 advance appropriations in Title VIII of Division J of IIJA ($48,465,000 from each year); and $3,922,784 in carryover funding from the FY 2019–2020 Appropriations is available.

2. Award Limits

Under 49 U.S.C. 22908(e)(2), not more than six R&E grants may be simultaneously active. FRA considers a grant active at the time of selection. In addition, FRA considers all selections under the R&E program for the same Service, on the same Route, to the same recipient, as one R&E grant, subject to the limitations in 49 U.S.C. 22908(e). To date, FRA made four selections under the R&E Program for three Services. Two of the selections were for the same applicant, for the same Service, on the same Route; FRA considers this as a single grant. Therefore, FRA currently has three simultaneously active R&E grants.[6] Accordingly, under this NOFO, FRA may select up to three Services on Routes that (1) do not have a currently active R&E grant or (2) do have a currently active R&E grant but the application is submitted by an applicant that is different than the applicant or recipient for the currently active R&E grant. In addition, FRA may make up to three selections for additional funding to the same recipient for Services on Routes that have a currently active R&E grant, subject to the limitations in 49 U.S.C. 22908(e). An individual Service on a Route can only be selected for one R&E award under this NOFO.

Under 49 U.S.C. 22908(e)(1), R&E grants may not provide funding for more than six years on any individual Intercity Rail Passenger Transportation Route and may not be renewed. Currently active R&E grants that were selected for three years of funding under the FY 2017 and FY 2018–20 R&E NOFOs are eligible for funding for additional Years of Service for the same Service on the same Route, not to exceed a combined total of six years.

Applicants can apply to use R&E funding for: (a) multiple Years of Service or (b) only one Year of Service, provided the Service has not already received six years of R&E funding. Recipients receiving less than six years of funding for a Service on any individual Intercity Rail Passenger Transportation Route under this NOFO and/or previous R&E NOFOs may apply for R&E grants under future NOFOs, if available.

3. Award Size

FRA anticipates selecting multiple projects for the funding made available. There are no predetermined minimum or maximum dollar thresholds for awards.

FRA strongly encourages applicants to identify and include other state and/or local public funding and/or private funding to support the proposed project to maximize competitiveness. A recipient of a R&E grant may use the grant funding in combination (*i.e.,* administered separately but concurrently) with other federal grants that would benefit the applicable Service.

4. Award Type

FRA will make awards for projects selected under this NOFO through grant agreements or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The term ''grant'' is used throughout this document and is intended to reference funding awarded through a grant agreement, as well as funding awarded through a cooperative agreement.

[5] Of the funding made available from FY 2021–2023, $144,904 from FY 2021, $1,535,000 from FY 2022, and $1,535,000 from FY 2023 will be separately made available for Special Transportation Circumstances grants. Also, $47,200 from FY 2021, $250,000 from FY 2022, and $250,000 from FY 2023 will be set-aside, from R&E funding only (not the Amtrak National Network account), for award and program oversight conducted by FRA.

[6] The currently active R&E grants selected from the FY 2017 and FY 2018–2020 R&E NOFOs are the CT*rail* Hartford Line Rail Enhancement Project; Restoring Intercity Passenger Rail Service along America's Gulf Coast; and Twin Cities-Milwaukee-Chicago Intercity Passenger Rail Service Project (now known as Borealis).

The funding provided under this NOFO will be made available to recipients on a reimbursable basis. Recipients must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA.

The FRA grant agreement consists of three parts: Attachment 1: Standard Terms and Conditions; Attachment 2: Project-Specific Terms and Conditions; and Terms and Conditions Exhibits. The grant agreement templates are available at: *https://railroads.dot.gov/grants-loans/fra-discretionary-grant-agreements.* These templates are subject to revision.

5. Concurrent Applications

DOT and FRA may concurrently solicit applications for related transportation infrastructure projects for several financial assistance programs. Applicants may submit applications requesting funding for a related project to one or more of these programs. In the application for funding under this NOFO, applicants must indicate the other program(s) to which they submitted or plan to submit an application for funding the entire project or certain components, as well as highlight new or revised information in the application responsive to this NOFO that differs from the previously submitted application(s).

C. Eligibility Information

This section of the NOFO explains applicant eligibility, project eligibility, and cost sharing or matching [7] requirements. Applications that do not meet the requirements in this section will be ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in Section D of this Notice.

1. Eligible Applicants

Consistent with 49 U.S.C. 22908(a)(1), eligible applicants for R&E funding are:

a. A State (including the District of Columbia);

b. A group of States;

c. An entity implementing an Interstate Rail Compact;

d. A public agency or publicly chartered authority established by one or more States;

e. A political subdivision of a State;

f. A federally recognized Indian Tribe;

g. Amtrak or another Rail Carrier that provides Intercity Rail Passenger Transportation;

h. Any Rail Carrier in partnership with at least one of the entities described in paragraphs (a) through (f); and

i. Any combination of the entities described in paragraphs (a) through (f).

See Section D(2)(a)(iv) of this NOFO for information about supporting documentation required to demonstrate eligibility in the application.

If an application includes a partnership with more than one eligible applicant, the application must identify one lead eligible applicant to be the recipient, as well as primary point of contact for the application.[8] Eligible applicants may reference entities that are not eligible applicants in an application as project partners.

2. Cost Sharing or Matching

Grants for a project funded under the Program shall not exceed 90 percent of the projected Net Operating Costs for the first Year of Service; 80 percent of the Net Operating Costs for the second Year of Service; 70 percent of the projected Net Operating Costs for the third Year of Service; 60 percent of the projected Net Operating Costs for the fourth Year of Service; 50 percent of the projected Net Operating Costs for the fifth Year of Service; and 30 percent of the projected Net Operating Costs for the sixth Year of Service. Net Operating Costs not covered by the R&E grant may be comprised of eligible public sector funding (*e.g.,* state, local, or other federal funding) or private sector funding.

Applicants must identify the source(s) of non-R&E grant funds for the Service, and they must clearly and distinctly reflect these funds in the budget sections of the application.

A recipient of a R&E grant under this NOFO may use that grant in combination with other federal grants awarded that would benefit the applicable Service.

3. Other

Operating Costs eligible for funding under this NOFO must be for projects within the United States and must be associated with Enhancing, Initiating, or Restoring Service on an Intercity Rail Passenger Transportation Route or train.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See Section D(2) for the application checklist. FRA welcomes the submission of additional relevant supporting documentation, such as planning, engineering and design documentation (as applicable), and letters of support from partnering organizations, which will not count against the Project Narrative 25-page limit.

1. Address

Applicants may access application materials at *https://www.Grants.gov* and must submit all application materials in their entirety through *https://www.Grants.gov* no later than 5 p.m. ET, on September 30, 2024. Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Additional information about the registration process is available at: *https://www.grants.gov/web/grants/applicants/organization-registration.html.*

Applicants are strongly encouraged to apply early to ensure that all materials are received before the application deadline. FRA reserves the right to modify this deadline. General information for submitting applications through *Grants.gov* can be found at: *https://www.fra.dot.gov/Page/P0270.* FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons who have a disability. If you require an alternative version of files provided, please contact Laura Mahoney, Office of the Chief Financial Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; email: *laura.mahoney@dot.gov;* phone: 202–578–9337.

The E-Biz point of contact at the applicant's organization must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

If an applicant experiences difficulty at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and

[7] 49 U.S.C. 22908(e) identifies a maximum funding limitation for R&E grants, but it does not establish a maximum federal share or a minimum non-federal cost share requirement.

[8] If the proposed project involves executing cost sharing agreements with other partners, prior to application submission, the applicant (or lead applicant, as applicable) should coordinate with each partner to understand its respective financing/payment requirements (*e.g.,* considerations for any partner's requirement of upfront payment of its share of costs as opposed to monthly invoicing, challenges with partner not having financial mechanism to recover any overpayment of funds to the applicant, etc.). The applicant (or lead applicant, as applicable) should describe this coordination, identified challenges, and any proposed resolution in the application. Only one eligible applicant can be the recipient, and FRA will only disburse funds to the recipient.

instructions on each of these processes, please see instructions at: *https://www.grants.gov/web/grants/applicants/apply-for-grants.html.*

2. Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding. Applications that are not submitted on time or do not contain all required documentation will not be considered for funding. To support the application, applicants may provide other relevant and available optional supporting documentation that may have been developed by the applicant, especially such documentation that provides evidence of completion of the appropriate Lifecycle Stage(s), if capital improvements are necessary before starting the operation Lifecycle Stage of the proposed Service. FRA evaluates project readiness for a Lifecycle Stage when considering a proposed project for funding. Additionally, applicants selected to receive funding must satisfy any applicable requirements in 49 U.S.C. 22905, including FRA's Buy America requirement and conditions explained in part at *https://www.fra.dot.gov/page/P0185* and further in Section F(2) of this Notice.

Sharing of Application Information—FRA may share application information within USDOT or with other federal agencies if FRA determines that sharing is relevant to the respective program's objectives.

Required documents and information for an application package include the following:

Attachment(s) name	NOFO section
Project Narrative	D.2.a.
Statement of Work (SOW), project budget, estimated project schedule, and performance measures	D.2.b.i.
Capital and mobilization plan	D.2.b.ii.
Operating plan	D.2.b.iii.
Funding plan	D.2.b.iv.
Status of negotiations and agreements	D.2.b.v.
Environmental Compliance Documentation	D.2.b.vi.
Funding Commitment Supporting Documentation	D.2.a.iii.
SF 424—Application for Federal Assistance [9]	D.2.b.vii.
SF 424A—Budget Information for Non-Construction	D.2.b.viii.
SF 424B—Assurances for Non-Construction	D.2.b.ix.
FRA F 30—Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying.	D.2.b.x.
FRA F 251—Applicant Financial Capability Questionnaire	D.2.b.xi.
SF LLL—Disclosure of Lobbying Activities, if applicable	D.2.b.xii.

a. Project Narrative

This section describes the minimum content required in the Project Narrative section of the grant application. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

Project narrative section name	NOFO section
I. Cover Page	See D.2.a.i.
II. Project Summary	See D.2.a.ii.
III. Grant Funds, Sources and Uses of Project Funds	See D.2.a.iii.
IV. Applicant Eligibility Criteria	See D.2.a.iv.
V. Project Eligibility Criteria	See D.2.a.v.
VI. Detailed Project Description	See D.2.a.vi.
VII. Project Location	See D.2.a.vii.
VIII. Evaluation and Selection Criteria	See D.2.a.viii.
IX. Project Implementation and Management	See D.2.a.ix.

The applicant must provide the content listed above in a narrative statement. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). FRA will not review or consider Project Narratives beyond the 25-page limit. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the relevant portion of the supporting document with the page numbers of the cited information in the Project Narrative. The Project Narrative must adhere to the following outline:

i. *Cover Page:* Include a cover page that lists the following elements in either a table or formatted list:

Project title	
Applicant (Lead Applicant, as applicable).	
City(ies), State(s), Congressional District(s) where the project is located.	
Is this request funding an existing or new Route and/or Service?	
Proposed or current Service operator?	
Rail ROW owner(s)?	

[9] The amount requested from the R&E Program on the SF–424 is the official record of request, and therefore must be consistent with the amount requested in the Project Narrative and project budget, including the breakdown of federal and non-federal sources. For applications with discrepancies, FRA will defer to the funding amount in the SF–424.

Project title	
Host Railroad(s) of Route?	
Proposed Years of Service.	
Projected total Operating Costs for the proposed Service for all Years of Service in this application	$
Projected Revenue for the proposed Service for all Years of Service in this application	$
Projected total Net Operating Cost for the proposed Service for all Years of Service in this application ..	$
Total amount of R&E funding requested for all Years of Service.	
Total amount of funding for Net Operating Costs not funded by proposed R&E grant for all Years of Service.	
Previously awarded R&E funding for the Service, if applicable, by Year of Service	R&E Program Year:/$ for Year(s) X of Service.
Was a federal grant application previously submitted for any necessary capital projects on the Route or for the Service described in this application?.	If yes, please specify the program, funding year and project title of the previous application.
Are any capital improvements required to be completed before Initiation, Restoration, or Enhancement activities under this request?.	If yes, please summarize.

ii. *Project Summary:* Provide a brief 4–6 sentence summary of the proposed project, including the Service and Route. Include challenges the proposed project aims to address and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Grant Funds, Sources and Uses of Project Funds:* In table format similar to the Project Funding by Year of Service Table in this section below [or: at the end of this subsection], the applicant must provide, for each Year of Service, the following: (1) Year of Service start date; (2) anticipated start date of each Year of Service; (3) amount of R&E funding requested; (4) projected Net Operating Costs; (5) estimated Operating Costs; (6) estimated Revenue; (7) percent of Net Operating Costs for which R&E funding is requested; (8) amount and source of non-R&E funding (non-federal funds and/or other federal funds, if applicable); and, (9) eligible activities for which R&E funding is requested.[10] If selected for award, recipients will be expected to report Operating Costs, Revenue, and Net Operating Costs for each Year of Service.

Applicants for additional funding for the same Service funded under a currently active R&E grant must describe how the funds under the FY 2017 and FY 2018–2020 R&E selections and the requested funding under this NOFO, if selected for award, will be used. Specifically, the applicant should describe, at a minimum, the following: (1) for FY 2017 and FY 2018–2020 R&E selections that have not yet been obligated, whether the funds under this NOFO would replace the previous R&E awards; (2) how additional funds under this NOFO will be applied to additional Years of Service; and (3) how all R&E funding will be used with respect to each Year of Service.[11] For such applications, in a funding table similar to the Project Funding by Year of Service Table below, add columns to identify the amount of the previous R&E selection and previously committed other funding, including the funding source(s).

All applicants must include funding commitment letters outlining proposed or confirmed funding agreements in the amount of the projected Net Operating Costs that would not be funded through the proposed R&E grant, in an attachment or appendix to the application.[12] Also, if applicable, indicate if the requested R&E funding or non-federal and other federal funding must be obligated or spent by a certain date due to dependencies or relationships with other federal or non-federal funding sources, related projects, law, or other factors. Rail Carriers other than Amtrak should state whether they will require access to Amtrak's reservation system, stations, or facilities because they are directly related to the Rail Carrier's operations, and whether they expect the FRA to award a portion of the requested R&E grant to Amtrak for such access (and in what amount).[13] Provide information about any requests submitted to other programs for capital funding related to the proposed project that supports the project's Initiation, Restoration, or Enhancement of the Intercity Rail Passenger Transportation Service.

Project funding information must be consistent throughout all application materials, specifically the Standard Form (SF) 424, Project Narrative, SOW, project budget, and funding commitment letters.[14] The project budget should be specific to the project scope described in the applicant's request for funding under this NOFO. The project budget should show how different funding sources will share in each activity and present the data in dollars and percentages. The budget should identify other federal funds the applicant is applying for, has been awarded, or intends to use for the project. Funding sources should be grouped into three categories: Non-federal, R&E Program funds that are part of this application request, and other federal funds with specific amounts from each funding source.

[10] Applicants should list specific eligible activities and, to the extent practical, should not group all activities under the general term ''Operations.'' Eligible R&E activities should be consistent with Section C(2) of this Notice. If the applicant determines that grouping certain activities into a broader term is more appropriate, the applicant should provide a narrative explanation (separate from the table) of the specific activities that are included in that term.

[11] For example, the applicant should describe if it proposes to use all of the R&E grant funds from the FY 2017 and FY 2018–20 R&E selections for the first Year of Service, and use new funds under this NOFO, if selected for award, for Years of Service two (2) through six (6).

[12] Applicants must indicate if funds are either (1) committed with pending formal approvals, or (2) committed with formal approvals received. If formal approvals have been received, applicants should submit evidence of the availability of funds, which may include a state/local appropriation, state/local administrative approval, board resolution, a budget document highlighting the line item or section committing funds to the proposed project, approval of programming of other federal funds, or any other similar documentation. The applicant may provide this documentation in an appendix. Documentation of previous and recent local investments in the project may convey evidence of state or local financial support for the project but are not a commitment of funds. Any funding commitment letters must be signed by an authorized representative of the entity providing the funds.

[13] The Secretary, acting through the FRA, is permitted in 49 U.S.C. 22908(h) to award an appropriate portion of R&E grants under this NOFO to Amtrak as compensation for permitting certain access.

[14] If there is a discrepancy between materials, FRA will defer to the funding amounts shown in the applicant's SF 424 as the amount requested for funding.

PROJECT FUNDING BY YEAR OF SERVICE

Year of service	Estimated operating costs	Estimated revenue	Projected net operating cost	R&E funds requested under this NOFO	Percent of net operating cost requested	Non-R&E amount/ source(s)	Eligible R&E activities by year of service [15]
Year 1 *[Add start date e.g., 6/01/25].* Year 2 *[Add start date e.g., 6/01/26].* Year 3 *[Add start date].* Year 4 *[Add start date].* Year 5 *[Add start date].* Year 6 *[Add start date].*							
Total.							

iv. *Applicant Eligibility Criteria:* The applicant must explain how the applicant meets the applicant eligibility criteria outlined in Section C of this Notice. For public agencies and publicly chartered authorities established by one or more States, the explanation must include citations to the applicable enabling legislation.

If the applicant is eligible under 49 U.S.C. 22908(a)(1)(H) as a Rail Carrier in partnership with at least one of the other eligible entities in Section 22908(a)(1)(A) through (a)(1)(F), the applicant should explain the partnership and each entity's contribution to the partnership. Similarly, if the applicant is a combination of entities described in Section 22908(a)(1)(A) through (a)(1)(F), the application should explain the partnership and each entity's contribution to the partnership.

Applicants must identify the applicant's legal authority to receive federal financial assistance and complete the project, including management of contracts and other activities necessary for the operation of intercity rail passenger Service, and provide supporting information, including citations to authorizing legislation and a legal opinion from the applicant's legal counsel.

v. *Project Eligibility Criteria:* The applicant must explain how the proposed project meets the project eligibility criteria in Section C(3) of this Notice.

vi. *Detailed Project Description:* The applicant must include a detailed project description that expands upon the project summary. This detailed description should provide the following, at a minimum: [16] (1) the specific components and elements of the proposed project, including planned Service frequency; (2) name and description of the planned Routes and schedules; (3) station facilities; (4) equipment that will be used and how it will be acquired or refurbished (if necessary); (5) where equipment will be maintained and by which entity; (6) additional background on the challenges the project aims to address; (7) the expected users and beneficiaries of the project; projected ridership, Revenues and costs; (8) all railroads/entities owning tracks to be used; (9) Service providers or entities expected to provide Services or facilities that will be used, including access to Amtrak systems, stations, and facilities; (10) train operators and their qualifications; (11) plan for ensuring safe operations; and (12) any other information the applicant deems necessary to justify the proposed project. An applicant must also specify whether it is seeking funding for a proposed project that has already received federal financial assistance, and, if applicable, explain how the proposed scope to be funded under this Notice relates to the previous scope that has received federal financial assistance.

vii. *Project Location:* The applicant must include geospatial data for the project along with other information as shown in the example project location table below, as well as a map of the proposed project's location. Geospatial data can be expressed in terms of decimal degrees for latitude and longitude of at least five decimal places of precision [17] (preferred option), along with start and end mileposts designating railroad code and subdivision name. On the map, include the Congressional districts in which the proposed project will take place.

PROJECT LOCATION TABLE

	Location (*e.g.*, corridor/ route name)	Start latitude	Start longitude	End latitude	End longitude	Host railroad	Right-of-way owner(s)	Railroad subdivision
Name of Service.								

viii. *Evaluation and Selection Criteria:* The applicant must include a thorough discussion of how the proposed project meets all the evaluation and selection criteria. FRA will evaluate applications based on project readiness, technical merit, and project benefits, and will consider how the applicant's project aligns with selection criteria (selection preferences and Administration Priorities). If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application. Applicants are expected to follow the directions and format requested in this NOFO, and adherence to these directions will be considered in evaluations. Applicants are encouraged to include quantifiable data related to the Initiation, Enhancement, or Restoration of Service.

ix. Project Implementation and Management: The applicant must describe proposed project implementation and project management arrangements. Include

[15] Applicants should list specific eligible R&E activities that are consistent with Section C(2) of this Notice and should not list a general descriptive term, such as ''Operations,'' for example, to cover all activities.

[16] The information should be consistent with details in the capital and mobilization plan and operating plan.

[17] For example, if a project was proposed to start at a (hypothetical) station at the Department of Transportation Headquarters in Washington, DC, then the reported latitude should be 38.87589 and the longitude should be reported as −77.00337.

descriptions of the expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to federal requirements for project progress reporting. Demonstrate legal, financial, and technical capacity to perform the proposed project.

Further, applicants must provide their plan for taking affirmative steps to employ small businesses consistent with 2 CFR 200.321. Describe past experience in managing and overseeing similar projects, as applicable; the technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts; and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget, including a discussion of the risk evaluation factors in 2 CFR 200.206(b) and the proposed approach to assessing and mitigating project risk (these factors may be summarized in the Project Narrative and additional information may be provided as supporting documentation, as applicable).[18]

b. Additional Application Elements

Applicants must submit the documents and forms listed in this section. NOTE: The Standard OMB Forms needed for the electronic application process are available at: *www.Grants.gov*.

i. A statement of work (SOW) addressing the scope, budget, estimated project schedule, and performance measures for the proposed project if it were selected for award. Applicants are expected to use the templates for the SOW, project budget, estimated project schedule, and performance measures that are Articles 4–7 of Attachment 2: Restoration and Enhancement Grant Program Project Specific Terms and Conditions. Those documents must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applications that do not follow this format may be considered incomplete and may not be reviewed.[19]

When preparing the budget, the estimated total Net Operating Cost of the proposed project must be based on the best available information, including engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment and/or facilities. The project schedule should be sufficiently detailed to include the date when the first Year of Service will commence and the planned Revenue Service start date, as well as reasonable due dates for expenses associated with the operation of the Service.

For all proposed projects, applicants must provide information about proposed performance measures, as described in Section F(3) and required in 2 CFR 200.301. Further, applicants must provide their plan for taking affirmative steps to employ small businesses consistent with 2 CFR 200.321.

ii. Capital and mobilization plan that includes:

(A) A description of any necessary capital investments recently completed or not-yet-completed for the Service that are related to the proposed project (as applicable), Service planning actions (such as environmental reviews), and mobilization actions (such as qualifications of train crews) required for Initiation, Enhancement, or Restoration of the intercity passenger rail transportation; and

(B) A timeline for undertaking and completing each of the investments and actions referred to in subparagraph (A) above. Applicants must follow the sample timeline table format to the extent practical (modifications can be made by adding rows or columns, as appropriate). In addition, the timeline table must include all actions required, along with realistic, estimated completion timeframes, to start Service, using FRA's anticipated R&E award selection timeframe as a key milestone—see the FRA Discretionary Grants Calendar on the FRA website.[20] The applicant should describe which eligible R&E activity(ies) are part of the first Year of Service to help inform when R&E grant cost accounting would start. Separate from the table, applicants should describe any assumptions or provide any explanatory information to add proper context.

SAMPLE TIMELINE TABLE

Activity *	Status (*not started, in progress, complete, or not applicable* **)	R&E eligible activity planned to be part of first year of service? (yes/no)	Est. start date (month/year)	Est. completion date (month/year)
Environmental Clearance	.....	.....	MONTH 202X	MONTH 202X.
Securing Equipment.				
Train Crew Hiring.				
Train Crew Qualifying.				
Agreement with host railroad *(preparation of draft through execution).*				
Operating agreement *(preparation of draft through execution).*				
Cost share agreement *(preparation of draft through execution).*				
Process of securing approvals for the name of the new Service, as applicable.				
[Insert other activity (e.g., any necessary capital improvements, etc.)].				
[Insert other activity].				
Start of Revenue Service.				

* Applicants should include all major and notable activities, whether they are eligible or not eligible under the R&E Program, that are necessary for Revenue Service to begin. If an activity is complete at the time of application submission, indicate completion date (Month/Year).

[18] Project risks, such as procurement delays, litigation uncertainties, pending decisions on securing commitments of funds (and any uncertainty with timing of necessary state/local legislative appropriation action) or other federal funding assistance sources, concerns expressed by stakeholders, or lack of legislative approval, affect the likelihood of successful project start and completion. Applicants must identify all material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake to mitigate those risks. The applicant will assess the greatest risks to the project and identify how the project parties will mitigate those risks. The applicant must include its risk monitoring, management and mitigation strategy and explain management staffing plans and procedures.

[19] The FRA grant agreement consists of three parts: Attachment 1: Standard Terms and Conditions, Attachment 2: Project-Specific Terms and Conditions, and Terms and Conditions Exhibits. The updated agreements are available at: *https://railroads.dot.gov/grants-loans/fra-discretionary-grant-agreements.*

[20] *https://railroads.dot.gov/elibrary/calendar-fra-publications-cy2024* or *https://railroads.dot.gov/grants-loans/grants-loans* (under the 'Related Links' section).

iii. Operating plan describing:
(A) Planned Service operation;
(B) Identity and qualifications of the train operator;
(C) Identity and qualifications of any other Service providers (*e.g.,* on-board Service, equipment maintenance, station staff);
(D) Service frequency;
(E) Planned Routes and schedules;
(F) Station facilities that will be utilized;
(G) Projected ridership, Revenues, and costs, along with descriptions of how and when the projections were developed;
(H) Equipment that will be utilized, how and when such equipment will be acquired or refurbished (if necessary), and where such equipment will be maintained; and
(I) A plan for ensuring safe operations and compliance with applicable safety regulations.
iv. Funding plan that:
(A) Describes the funding of initial capital costs and Operating Costs for the first six years of operation, along with projected Revenue and Net Operating Costs. Provide date of cost estimates and indicate if cost estimate updates are pending or needed;
(B) Includes commitment by the applicant to provide the funds described in subparagraph (1) to the extent not covered by federal grants and Revenues; and
(C) Describes the funding of Operating Costs and capital costs, to the extent necessary, after the first six years of operation.
(D) The applicant should propose a schedule for payment of invoices and submission of federal reimbursement requests.[21] Also, describe how that proposed schedule aligns with the applicant's fiscal year and reconciliation of expenditures. The applicant should generally describe its process, including timeframes, to reconcile Operating Costs and account for Revenue for each Year of Service in relation to its fiscal year. For example, if some Operating Costs for the first Year of Service are incurred near the end of the fiscal year, describe the process to reconcile all first Year of Service Operating Costs, as it could impact budgeting and financial accounting for subsequent Years of Service. FRA will work with applicants selected for an R&E award to review and discuss further.
v. Status of negotiations and agreements with:
(A) Each of the railroads or regional transportation authorities whose tracks or facilities would be utilized by the Service;
(B) The anticipated Rail Carrier if such entity is not part of the applicant group;
(C) Any other Service providers or entities expected to provide Services or facilities that will be used by the Service, including any required access to Amtrak systems, stations, and facilities if Amtrak is not part of the applicant group; and
(D) Cost share partners if there will be multiple parties contributing toward the cost of the Service. Indicate the level of approval required within each entity and/or if any council, board, or legislative approval is required.
vi. Environmental compliance documentation, as applicable, if a website link is not cited in the Project Narrative. Applicants should explain what federal (and, if appropriate, state, tribal, and local) environmental compliance and permitting requirements have been completed. Such requirements include NEPA and other federal, state, tribal, and local permitting requirements, if applicable. For all other federal, state, tribal, and local permitting requirements, the applicant should describe which permits apply, the status of those reviews, and the expected timeline for completion. If the NEPA process is complete, an applicant should indicate the date of completion, and provide a website link or other reference to the documents demonstrating compliance with NEPA, which might include a final Categorical Exclusion determination documentation, Finding of No Significant Impact, or Record of Decision. If the NEPA process is not yet underway, the application should state this. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all NEPA-related milestones. Additional information regarding FRA's environmental processes and requirements is located at *https://railroads.dot.gov/rail-network-development/environment/environment.*
vii. SF 424—Application for Federal Assistance.
viii. SF 424A—Budget Information for Non-Construction.
ix. SF 424B—Assurances for Non-Construction.
x. FRA F30—Certification Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying.
xi. FRA F 251—Applicant Financial Capability Questionnaire.
xii. SF LLL—Disclosure of Lobbying Activities.

3. Unique Entity Identifier (UEI) and System for Award Management (SAM)

To apply for funding through *www.Grants.gov,* applicants must be properly registered in SAM before submitting an application, provide a valid UEI in its application, and continue to maintain an active SAM registration all as described in detail below. Complete instructions on how to register and submit an application can be found at *www.Grants.gov.* Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable SAM requirements, and if an applicant has not fully complied with the requirements by the time the federal awarding agency is ready to make a federal award, the federal awarding agency may determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant. Late applications, including those that are the result of a failure to register or comply with *Grants.gov* applicant requirements in a timely manner, will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *www.Grants.gov,* applicants must follow the directions below in Section D(3)(a).

a. Register With the SAM at www.SAM.gov

All applicants for federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov.* The SAM database is the repository for standard information about federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via *www.Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note,

[21] Applicant can list timeframes, such as ''invoices to be paid [insert number] days after receipt of invoice; reimbursement requests would be submitted on [insert appropriate timeframe (quarterly, semi-annually, etc.)] basis, etc.''

however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award, including information on a recipient's immediate and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a federal contract or grant within the last three years, if applicable. Information about SAM registration procedures is available at *www.SAM.gov.*

b. Obtain a Unique Entity Identifier

On April 4, 2022, the Federal government discontinued using the Data Universal Numbering System (DUNS). The DUNS number was replaced by a new, non-proprietary identifier that is provided by the System for Award Management (*SAM.gov*). This new identifier is called the Unique Entity Identifier (UEI), or the Entity ID. To find or request a Unique Entity Identifier, please visit *www.SAM.gov.*

4. Submission Dates and Times

Applicants must submit complete applications to *www.Grants.gov* no later than 11:59 p.m. ET, September 30, 2024. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews *www.Grants.gov* information on dates/times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered. To apply for funding under this announcement, all applicants are expected to be registered as an organization with *Grants.gov*. Applicants are strongly encouraged to apply early to ensure all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, no late submissions will be reviewed for any reason, including: (1) failure to complete the *Grants.gov* registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

5. Intergovernmental Review

Intergovernmental Review is required for this Program. Applicants must contact their state single point of contact to comply with their state's process under Executive Order 12372.[22]

6. Funding Restrictions

Consistent with 2 CFR 200.458, as applicable, FRA will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work.[23] Under 2 CFR 200.458, grant recipients must seek written approval from FRA for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without FRA's written approval may be ineligible for reimbursement.

FRA is prohibited under 49 U.S.C. 22905(f) from providing R&E grants for Commuter Rail Passenger Transportation. FRA's interpretation of this provision is informed by the language in 49 U.S.C. 22908(b). Under this NOFO, FRA's primary intent in funding projects is to help offset initial operating losses while the new or expanded Intercity Passenger Rail Services build their ridership and Revenue base. Such projects may be located on shared corridors where Commuter Rail Passenger Transportation and/or freight rail also benefit from the project.

7. Other Submission Requirements

a. Submission Location

Applications must be submitted to *www.Grants.gov.* FRA does not accept applications via mailed paper, fax machine, email, or other means.

b. Consideration of Applications

Only applicants who comply with all submission deadlines described in this NOFO and electronically submit valid, on-time applications through *www.Grants.gov* will be eligible for award.

c. Late Applications

Any applications that *Grants.gov* time stamps after 11:59 p.m. ET September 30, 2024 will not be accepted. Applicants are strongly encouraged to make submissions days, if not weeks, in advance of the deadline, and applicants facing technical issues are advised to contact the *Grants.gov* helpdesk well in advance of the deadline.

E. Application Review Information

1. Criteria

a. Eligibility and Completeness Review

FRA will first screen each application for applicant and project eligibility (eligibility requirements are outlined in Section C of this Notice) and completeness (application documentation and submission requirements are outlined in Section D of this Notice). As described in Section D(2)(a)(iv), FRA will also evaluate information provided by the applicant to identify and support its legal authority to undertake the activities it would conduct if it is selected for an R&E grant award.

b. Evaluation Criteria

FRA will evaluate all eligible and complete applications using the evaluation criteria (as part of the merit review) outlined in this section to determine project readiness, technical merit, and project benefits. FRA will consider the adequacy of information provided in the application in evaluating whether the application is complete and responsive to the evaluation criteria.

i. Project Readiness

In evaluating Project Readiness, FRA will evaluate project and applicant risk based on the applicant's preparedness and capacity to implement the proposed project, including whether the applicant is reasonably equipped to begin operation of the Service in a timely manner to meet their proposed schedule. FRA will evaluate whether the applicant is able to meet project milestones and use federal funds efficiently to deliver the proposed project.[24] In addition to responding to the Project Readiness criteria, applicants should provide a thorough summary of the following, which should overlap with information in the required documents: operating plan; capital and mobilization plan including any capital investments, Service planning actions, mobilization actions (such as qualification of train crews); and timeline for undertaking and completing each of the investments. Describe additional information such as the status of negotiation of any cost share agreements between partners (indicate the level of approval required within each entity); acquisition of equipment status and timeline; construction of any

[22] *https://www.archives.gov/federal-register/codification/executive-order/12372.html.*

[23] For more information on pre-award costs, see FRA Answers to Frequently Asked Questions about Pre-Award Authority, available at: *https://railroads.dot.gov/elibrary/federal-railroad-administration-answers-frequently-asked-questions-about-pre-award.*

[24] Additional information on DOT's Project Readiness checklist can be found here: *https://www.transportation.gov/grants/dot-navigator/project-readiness-checklist-dot-discretionary-grant-applicants.*

necessary infrastructure for the Initiation, Restoration, or Enhancement of Service to be funded under this Notice; status of the installation and/or full implementation of a Positive Train Control system, as applicable; other federal/non-federal agency approvals (*e.g.* Surface Transportation Board approval); and, other actions necessary for Initiation, Restoration, and Enhancement of Service that have been completed or remain necessary for completion.

FRA will evaluate application information for the degree to which the application demonstrates strong project readiness, evidenced by:

(A) The appropriate planning, design, any environmental reviews, negotiation of agreements, acquisition of equipment, construction, and other actions necessary for Initiation, Restoration, or Enhancement of Service have been completed or nearly completed (49 U.S.C. 22908(d)(1));

(B) Funds are committed (*i.e.,* level of certainty of the commitment, such as the funds are secured with necessary approvals vs. necessary approvals are pending) to cover the portion of the Net Operating Costs not covered by the R&E grant;

(C) The capital and mobilization plan, operating plan, funding plan, and status of negotiations and agreements described in Section D(2)(b), are appropriate for the proposed project, including the planned first Year of Service, proposed Service start date, and subsequent Year(s) of Service included in the proposed grant period of the proposed project, at a minimum (See 49 U.S.C. 22908(c)).

ii. Technical Merit

In evaluating Technical Merit, FRA will evaluate the degree to which the SOW, project budget, and estimated project schedule are reasonable and appropriate to achieve the expected outcomes, commitment of necessary resources and workforce to deliver the project, and the proposed project elements are appropriate for the project funding request. FRA will also consider applicant risk with respect to the applicant's past performance as a FRA recipient for grant-funded projects, as applicable. FRA will evaluate application information for the degree to which:

(A) The tasks and subtasks outlined in the SOW, estimated project schedule, and project budget, are reasonable and appropriate to achieve the expected outcomes of the proposed project;

(B) The technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts, and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget;

(C) The applicant's past performance in developing and delivering similar projects, as applicable, and previous financial contributions;

(D) The applicant's proposed approach to assessing and mitigating risk is appropriate for the proposed project;

(E) Whether the applicant has, or will have, the legal, financial, and technical capacity to carry out the project; satisfactory continuing access to equipment or facilities; and the capability and willingness to maintain the equipment or facilities.

iii. Project Benefits

FRA will evaluate the project benefits of the proposed project for the anticipated private and public benefits, including any combination of the following:

(A) Provide daily or daytime Service over Routes where such Service did not previously exist (49 U.S.C. 22908(d)(3));

(B) Restore Service over Routes formerly operated by Amtrak, including Routes described in section 11304 of the Passenger Rail Reform and Investment Act of 2015 (49 U.S.C. 22908(d)(2));

(C) Provide Service to regions and communities that are underserved or not served by other intercity public transportation (49 U.S.C. 22908(d)(6));

(D) Foster economic development, particularly in rural communities and for disadvantaged populations (49 U.S.C. 22908(d)(7));

(E) Provide other non-transportation benefits (49 U.S.C. 22908(d)(8)); and,

(F) Enhance connectivity and geographic coverage of the existing national network of Intercity Passenger Rail Service (49 U.S.C. 22908(d)(9)).

For each evaluation criterion—Project Readiness, Technical Merit, and Project Benefits—FRA will evaluate whether the application demonstrates level of risk or responsiveness, as applicable, and will result in a rating of ''unacceptable,'' ''high,'' ''medium,'' or ''low'' as described in the rubric tables below. For each merit criterion, FRA will use rubric ratings with applied criteria to evaluate whether the applications meet the defined thresholds:

MERIT CRITERIA RATINGS—PROJECT READINESS (RISK)

[For the Project Readiness Criteria described in Section E(1), FRA will evaluate the application's responsiveness to the criteria, including an assessment of supporting justifications, and assign a cumulative Project Readiness risk rating.]

Unacceptable	High risk	Medium risk	Low risk
Application provides limited or no information necessary to assess the readiness criterion; application fails to demonstrate support, progress, or completion of appropriate Service preparation activities; or application contains one or more barriers that would prevent project delivery.	Application provides insufficient information to assess the readiness criterion; application does not demonstrate that sufficient support, progress, or completion of appropriate Service preparation activities but indicates risk to advancing the project without foreseeable delays; or application contains a barrier that would likely prevent project delivery in any of these areas.	Application provides sufficient information to assess the project readiness criteria; demonstrates support, progress, or completion of appropriate Service preparation activities, but indicates some risk to advancing the project in a timely manner; and the application does not contain a barrier that would likely prevent project delivery in any of these areas.	Application provides thorough and complete information and evidence to assess the project readiness criteria, and demonstrates strong support, progress, or completion of appropriate Service preparation activities, and indicates minimal risk to advancing the project in a timely manner; and application does not contain a barrier that would likely prevent project delivery in any of these areas.

MERIT CRITERIA RATINGS—TECHNICAL MERIT

[For the Technical Merit Criteria described in Section E(1), FRA will evaluate the application's responsiveness to the criteria, including an assessment of supporting justifications, and assign a cumulative technical merit rating.]

Unacceptable	Acceptable	Responsive	Highly responsive
Application provides limited or no information necessary to assess the technical merit criteria, or application demonstrates one or more significant technical challenges that would prevent the applicant from delivering the project.	Application contains insufficient information to assess one or more of the technical merit criteria, or application demonstrates technical challenges that could affect project delivery, but not prevent the applicant from delivering the project.	Application provides sufficient information and evidence to assess the technical merit criteria, and it demonstrates that the applicant can deliver the project with minimal technical challenges.	Application provides thorough and complete information and evidence to assess the technical merit criteria, and sufficiently demonstrates that the project can be successfully delivered by the applicant.

MERIT CRITERIA RATINGS—PROJECT BENEFITS

[For the Project Benefits Criteria described in Section E(1) FRA will evaluate the application's responsiveness to the criteria, including an assessment of supporting justifications, and assign a cumulative Project Benefits rating.]

Unacceptable	Acceptable	Responsive	Highly responsive
Application provides limited or no information necessary to assess the project benefits criteria, and demonstrates the project is not likely to achieve its intended benefits.	The application contains insufficient information to assess the project benefits criteria; or does not demonstrate that the project will achieve all its intended benefits.	Application provides sufficient information to assess the project benefits criteria, and adequately demonstrates that the project will likely achieve its intended benefits.	Application provides thorough and complete information and evidence to assess the project benefits criteria, and it sufficiently demonstrates that the project will achieve its intended benefits.

In addition to the ratings described above, FRA will also apply the selection preferences and consider the Administration Priorities, both described in Section E(1).

iv. Selection Criteria

After completing the review of eligibility, completeness, and evaluation criteria (merit review), among projects of similar merit, FRA will apply the following criteria:

(A) *Selection Preferences.* FRA will give preference to applications that include or demonstrate—

1. The proposed R&E funding is less than the maximum funding limit for the applicable Year(s) of Service, as specified in Section C(2);

2. The application includes funding more than one source, such as state, local, regional governmental, and/or private sources, demonstrating broad participation by affected stakeholders (49 U.S.C. 22908(d)(4));

3. The applicant has funding plan that demonstrates the Service will be financially sustainable beyond the grant period of performance (49 U.S.C. 22908(d)(5));

4. The proposed Services are on Route(s) selected under the Corridor Identification and Development Program and operated by Amtrak (49 U.S.C. 22908(d)(10)); [25] and,

5. The start of Revenue Service is likely to occur within one year of award selection. This means most Service preparation activities, particularly activities with uncertain duration or duration of more than one year and activities necessary to resolve complex issues, have been initiated, are well underway, and have realistic near-term completion dates based on supporting explanations and/or documentation. This is due to the limitation on the number of active R&E grants.

(B) *Administration Priorities:*

USDOT prioritizes projects that help to address transportation insecurity, which is the inability for people to get to where they need to go to meet the needs of their daily life regularly, reliably, and safely due to either the high cost of transportation, lack of access, or lack of safe transportation options. When identifying projects, applicants must consider how the proposed project will increase safety, lower transportation costs, increase the availability of multimodal transportation options, and decrease greenhouse gas emissions. Funding applications should state the identified area of transportation insecurity the project is mitigating or reversing. USDOT will also consider whether the applicant is participating in a federal technical assistance program as part of the cross-government place based technical assistance efforts, as appropriate.

1. *Safety:* FRA will assess the project's ability to foster a safe transportation system for the movement of goods and people, consistent with the Administration's Priorities to reduce transportation-related fatalities and serious injuries across the transportation system. Such considerations will include, but are not limited to, safe operations of the Intercity Passenger Rail Service. Overall, FRA expects that projects will provide positive safety benefits for all users and not negatively impact safety for all users.

2. *Climate Change and Sustainability:* FRA will assess the project's ability to reduce the harmful effects of climate change and anticipate necessary improvements to prepare for extreme weather events. Such considerations may include, but are not limited to, the extent to which the project reduces emissions, promotes energy efficiency, increases resiliency, incorporates evidence-based climate resilience measures or features, and avoids adverse environmental impacts to air quality. Projects that lead to a significant reduction of emissions meet the objective of this priority.

3. *Equity and Justice40:* FRA will assess elements including how the project will enable all people within the multimodal transportation networks to reach their desired destination safely, affordably, and with a comparable level of efficiency and ease, how the project helps reconnect communities and mitigate neighborhood bifurcation, and how the applicant will engage the public, including disadvantaged communities, during the project's operations Lifecycle Stage. FRA will consider the benefits and potential burdens a project may create, who would experience them, and how the

[25] The Corridor Identification and Development Program (Corridor ID) is a new program authorized under IIJA. FRA recently developed the program including the three corridor development steps (Steps), as well as made its first award selections on December 8, 2023, in response to the FY 2022 Corridor ID NOFO. Only projects proposed for funding under this NOFO that have completed all Corridor ID Steps will receive this preference. At the time of publication of this NOFO, no corridor has completed all Corridor ID Steps; therefore, it is not expected that any applicants will benefit from this preference.

benefits and potential burdens will impact underserved/disadvantaged communities.

Applicants are strongly encouraged to use FRA's Justice40 Rail Explorer Tool, (*https://usdot.maps.arcgis.com/apps/webappviewer/index.html?id=fd9810f673b64d228ae072bead46f703*) in their assessment, which is a rail-specific complement to the USDOT Equitable Transportation Community (ETC) Explorer.[26] The FRA Justice40 Rail Explorer Tool provides GIS information on communities and pollution based on the project's location, and applicants can use this tool to note how their project location scores across several different measures. Transportation disadvantaged communities experience burden, as a result of underinvestment in transportation, in the following five components: Transportation Insecurity, Climate and Disaster Risk Burden, Environmental Burden, Health Vulnerability, and Social Vulnerability.

4. *Workforce Development, Job Quality, and Wealth Creation:* FRA will assess how the project will create good-paying, safe jobs with free and fair choice to join a union; promote investments in high-quality workforce development programs with supportive services to help train, place, and retain people in good-paying jobs or registered apprenticeships, with a focus on women, people of color, and others who are underrepresented in infrastructure jobs (people with disabilities, people with convictions, etc.); and change hiring policies and workplace cultures to promote the entry and retention of underrepresented populations. Also, FRA will consider how the project promotes local inclusive economic development and entrepreneurship such as the utilization of Disadvantaged Business Enterprises, Minority-owned Businesses, Women-owned Businesses, or U.S. Small Business Administration 8(a) Business Development program firms.

For Administration Priorities, FRA will evaluate whether the application demonstrates level of risk or responsiveness, as applicable, and will result in a rating of ''Non-responsive,'' ''Acceptable,'' ''Responsive,'' or ''Highly Responsive'' as described in the rubric below. Applicants do not need to respond to all of the Administration Priorities if a certain criterion is not applicable to the proposed project or indicate if a criterion is not applicable.

ADMINISTRATION PRIORITIES RATINGS

[For the Administration Priorities Criteria described in Section E (1), FRA will evaluate the application's responsiveness to the criteria, including an assessment of supporting justifications.]

Non-responsive	Acceptable	Responsive	Highly responsive
Application contains insufficient information to assess benefits to any of the Administration Priorities OR project is inconsistent with one or more of the Administration Priorities.	Application contains limited information that is supported by some evidence, but primarily described qualitatively, that the project is consistent with at least one of the Administration Priorities.	Application contains sufficient information that is adequately supported by both quantitative and qualitative evidence that the project has clear and direct benefits in at least one of the Administration Priorities.	Application contains thorough and complete information that is strongly supported by both quantitative and qualitative evidence that the project has clear, direct, and significant benefits in one or more of the Administration Priorities, and is not inconsistent with any of the Administration Priorities.

The evaluation process may draw upon subject matter experts within FRA Divisions whose expertise is relevant to understanding the application's responsiveness to the Program criteria, such as assessing the applicant's capacity to successfully deliver the project in compliance with applicable federal requirements based on factors including, but not limited to, the recipient's experience working with federal agencies, previous experience with DOT discretionary grant awards and/or the technical experience and resources dedicated to the proposed project. Finally, in determining the allocation of program funds, FRA may also consider geographic diversity, diversity in the size of the systems receiving funding, and the applicant's receipt of other competitive awards.

Upon completion of all reviews, FRA will finalize an Overall Rating for each application. This rating will be a combination of the results of the three merit criteria reviews, specifically Project Readiness, Project Benefits, and Technical Merit criteria ratings as described in Section E(1); and the Administration Priorities as described in Section E(1). Provided in the Overall Rating Rubric below, each rating has defined parameters by which each application will be assessed.

OVERALL RATING

Not recommended	Acceptable	Recommended	Highly recommended
The application received an overall score of unacceptable based on Project Readiness, Technical Merit, and Project Benefits ratings, and consideration of Administration Priorities.	The application received an overall score of acceptable based on Project Readiness, Technical Merit, and Project Benefits ratings, and consideration of Administration Priorities.	The application received an overall score of recommended based on Project Readiness, Technical Merit, and Project Benefits ratings, and has clear and direct benefits in one of the Administration Priorities.	The application received an overall score of highly recommended based on Project Readiness, Technical Merit, and Project Benefits ratings, and has clear, direct, and significant benefits in one or more of the Administration Priorities.

2. Review and Selection Process

FRA will conduct a five-part application review process, as follows:

a. Intake and Eligibility Phase: Screen applications for applicant and project eligibility, completeness, and the minimum amount of non-federal funds or other federal financial assistance (completed by the Evaluation

[26] As appropriate, applicants may also supplement the Justice40 Rail Explorer Tool by referencing the Climate & Economic Justice Screening Tool (CEJST), a new tool by the White House Council on Environmental Quality (CEQ), that aims to help Federal agencies identify disadvantaged communities as part of the Justice40 initiative to accomplish the goal that 40 percent of benefits from certain federal investment reach disadvantaged communities.

Management and Oversight Team (EMOT) comprised of FRA program review directors who manage the pre-award process);

b. Evaluation Review Phase: Evaluate remaining applications against the technical merit criteria, project benefit criteria, and project readiness, assess environmental review risk, and consider alignment with the Administration Priorities. The evaluation review is conducted by technical merit review panels consisting of FRA staff. The technical merit review panels may also include other staff from the U.S. Department of Transportation (DOT). The EMOT will compile the results of the Evaluation Review Phase consistent with the R&E Program selection preferences. After considering all FRA reviews under the statutory requirements and evaluation and selection criteria, applications will be assigned an overall rating of ''Highly Recommended,'' ''Recommended,'' ''Acceptable,'' or ''Not Recommended'';

c. Steering Committee Phase: The Steering Committee is comprised of Senior Directors with the Office of Railroad Development, which may also include senior leadership from the Railroad Office of Safety and other relevant departments. The Steering Committee advises the EMOT in the development and review of the proposed materials in preparation of the Senior Review Team (SRT) briefing. The Steering Committee may request more information from FRA offices whose expertise may be relevant.

d. Senior Review Phase: The SRT will review, apply selection criteria, and recommend initial selection of projects for the FRA Administrator's review (completed by a Senior Review Team, which will include FRA senior leadership and may include senior leadership from the Office of the Secretary, as needed); and

e. Selection and Award Phase: Select recommended awards for the Under Secretary of Transportation's or his designee's review and approval (completed by the FRA Administrator).

3. Reporting Matters Related to Integrity and Performance

Before making a federal award with a total amount of federal funding greater than the simplified acquisition threshold per 2 CFR 200.1 and 2 CFR 200.320, FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information, in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

FRA will announce applications selected for funding in a press release and on FRA's website after the application review period. This announcement is FRA's notification to successful and unsuccessful applicants alike. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the recipient and the FRA, including an approved scope, schedule, and budget, before obligating the grant. See an example of standard terms and conditions for FRA grant awards at *https://railroads.dot.gov/grants-loans/fra-discretionary-grant-agreements.* This template is subject to revision.

2. Administrative and National Policy Requirements

In connection with any program or activity conducted with or benefiting from funds awarded under this Notice, recipients of funds must comply with all applicable requirements of federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of DOT; and applicable federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, must ensure, in particular, that no concession agreements are denied, or other contracting decisions made, on the basis of speech or other activities protected by the First Amendment. If DOT determines that a recipient has failed to comply with applicable federal requirements, DOT may terminate the award of funds and disallow previously incurred costs, requiring the grantee to reimburse any expended award funds.

Examples of administrative and national policy requirements include: 2 CFR part 200; procurement standards at 2 CFR part 200 subpart D, 2 CFR 1207.317, and 2 CFR 200.401; compliance with federal civil rights laws and regulations; disadvantaged business enterprises requirements; debarment and suspension requirements; drug-free workplace requirements; FRA's and OMB's Assurances and Certifications; the Americans with Disabilities Act (ADA); safety requirements; NEPA; and environmental justice requirements. Unless otherwise stated in statutory or legislative authority, or appropriations language, all financial assistance awards follow the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200 and 2 CFR part 1201.

Assistance under this NOFO is subject to the grant conditions in 49 U.S.C. 22905, including protective arrangements that are equivalent to the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants subject to 49 U.S.C. 22905, and the provision deeming operators Rail Carriers and employers for certain purposes.[27]

Projects that have not sufficiently considered climate change and sustainability in their planning, as determined by FRA, will be required to do so before obligating a grant, consistent with Executive Order 14008,[28] *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619). In the grant agreement, recipients will be expected to describe activities they have taken or will take that addresses climate change. Activities that address climate change include, but are not limited to, demonstrating the proposed project will result in significant greenhouse gas

[27] Under 49 U.S.C. 22905(c)(1), a written agreement between the applicant and the owner of railroad rights-of-way is only required if the project uses the railroad right-of-way. Financial assistance for a project that is limited to operations does not use the railroad right-of-way, so no such agreement is required.

[28] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/.*

emissions reductions; the project supports emissions reductions goals in a local/regional/state plan; the project improves disaster preparedness and resilience; and the project primarily focuses on funding for state of good repair and clean transportation options, including public transportation, walking, biking, and micro-mobility. Activities that address environmental justice inequities include, but are not limited to, supporting a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand.

Projects must consider and address equity and barriers to opportunity in their planning, as determined by FRA, consistent with Executive Order 13985,[29] *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009). In the grant agreement, recipients should include a description of activities they have taken or will take that addresses equity and barriers to opportunity. These activities may include, but are not limited to: completing an equity impact analysis for the project; adopting an equity and inclusion program/plan; conducting meaningful public engagement to ensure underserved communities are provided an opportunity to be involved in the planning process; including investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities; hiring from local communities; improving access to or providing economic growth opportunities for underserved, overburdened, or rural communities; or addressing historic or current inequitable air pollution or other environmental burdens and impacts.

Recipients must comply with applicable appropriations act requirements and all relevant requirements of 2 CFR part 200. Rights to intangible property under grants awarded under this NOFO are governed in accordance with 2 CFR part 200.315. See an example of standard terms and conditions for FRA grant awards at *https://railroads.fra.dot.gov/elibrary/award-administration-and-grant-conditions.* This template is subject to revision.

To the extent that applicants have not sufficiently considered job quality and labor rights in their planning, as determined by the Department of Labor, the applicants will be required to do so before receiving funds for construction, consistent with Executive Order 14025,[30] *Worker Organizing and Empowerment* (86 FR 22829), and Executive Order 14052,[31] *Implementation of the Infrastructure Investment and Jobs Act* (86 FR 64335). Specifically, the project delivery actions must support: (a) strong labor standards and the free and fair choice to join a union, including project labor agreements, local hire agreements, distribution of workplace rights notices, and use of an appropriately trained workforce; (b) high-quality workforce development programs, including registered apprenticeship, labor-management training programs, and supportive services to help train, place, and retain people in good-paying jobs and apprenticeships; and (c) comprehensive planning and policies to promote hiring and inclusion for all groups of workers, including through the use of local and economic hiring preferences, linkage agreements with workforce programs that serve underrepresented groups, and proactive plans to prevent harassment.

a. Federal Contract Compliance

As a condition of grant award and consistent with Executive Order 11246,[32] *Equal Employment Opportunity* (30 FR 12319, and as amended), all federally assisted contractors are required to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for work being performed by people of color. Under Section 503 of the Rehabilitation Act and its implementing regulations, affirmative action obligations for certain contractors include an aspirational employment goal of seven percent workers with disabilities.

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is charged with protecting America's workers by enforcing equal employment opportunity and affirmative action obligations of employers that do business with the federal government. OFCCP enforces Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Together these legal authorities make it unlawful for federal contractors and subcontractors to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran.

b. Critical Infrastructure Security, Cybersecurity, and Resilience

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for federal funding under this notice must demonstrate, prior to signing of the grant agreement, efforts to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Proposed projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before grant obligation, consistent with the National Security Memorandum Presidential Policy Directive 221 to Secure and Enhance the Resilience of U.S. Critical Infrastructure.[33]

c. Domestic Preference Requirements

Assistance under this NOFO is subject to the Buy America requirements in 49 U.S.C. 22905(a) and the Build America, Buy America Act, Public Law 117–58, 70901–52. In addition, as expressed in Executive Order 14005,[34] *Ensuring the Future Is Made in All of America by All of America's Workers* (86 FR 7475), it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. FRA expects all applicants to comply with that requirement without needing a waiver. However, to obtain a waiver, an applicant must be prepared to demonstrate how the applicant will maximize the use of domestic goods, products, and materials in constructing its project. If an applicant anticipates it may need a waiver, the applicant should indicate the need in its application and

[29] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

[30] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/26/executive-order-on-worker-organizing-and-empowerment/.*

[31] *https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/12/executive-order-on-the-implementation-of-the-energy-and-infrastructure-provisions-of-the-inflation-reduction-act-of-2022/.*

[32] *https://www.dol.gov/agencies/ofccp/executive-order-11246/ca-11246.*

[33] *https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/30/fact-sheet-biden-harris-administration-announces-new-national-security-memorandum-on-critical-infrastructure/.*

[34] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/.*

submit materials necessary for such requests together with its application.

d. Civil Rights and Title VI

As a condition of a grant award, grant recipients should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR part 21), the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act, all other civil rights requirements, and accompanying regulations. This may include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. DOT's and the applicable Operating Administrations' Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically. Pursuant to 2 CFR 170.210, non-federal entities applying under this NOFO must have the necessary processes and systems in place to comply with the reporting requirements should they receive federal funding.

b. Additional Reporting

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350. If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this federal award, then the applicant must maintain the information reported to SAM and ensure that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.

c. Performance and Program Evaluation

Recipients and subrecipients are also encouraged to incorporate program evaluation, including associated data collection activities from the outset of their program design and implementation, to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 115–435 (2019) urges federal awarding agencies and federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the Project Performance Period of the grant agreement/cooperative agreement. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency'' (5 U.S.C. 311). Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, Part 6 Section 290).

For grant recipients receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation (2 CFR part 200).

d. Performance Reporting

Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by FRA and the recipient to assess progress in achieving strategic goals and objectives. Examples of some performance measures are listed in the table below. The applicable measure(s) will depend upon the type of project, consistent with the recipient's application materials and program goals.

EXAMPLE PERFORMANCE MEASURES

Performance measures	Unit reported	Primary administration priority	Description
Number of Passenger Trains ...	Total number of Passenger Trains per Year.	Workforce Development, Job Quality, and Wealth Creation.	The number of daily passenger trains between city pairs on the Route.
Passenger Ridership (*i.e.,* Counts).	Total Ridership per Year	Workforce Development, Job Quality, and Wealth Creation.	Total annual passenger ridership represented in total tickets sold or trips completed for passengers boarding and alighting (departing and arriving) at all stations on the Route.
Annual Revenue	U.S. Dollars per Year	Workforce Development, Job Quality, and Wealth Creation.	Total annual Revenue generated from ridership of the Service, represented from total tickets sold for trips originating or terminating at all stations on the Route.

e. Program Evaluation

As a condition of grant award, grantees may be required to participate in an evaluation undertaken by DOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grantee, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award,

recipient must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

G. Federal Awarding Agency Contacts

For further information concerning this Notice, please contact the FRA NOFO Support program staff via email at *FRA-NOFO-Support@dot.gov.* If additional assistance is needed, you may contact Mr. Marc Dixon, Office of Rail Program Development, Federal Railroad Administration, at email: *marc.dixon@dot.gov;* or telephone: 202–493–0614.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

The DOT regulations implementing the Freedom of Information Act (FOIA) are found at 49 CFR part 7 Subpart C—Availability of Reasonably Described Records under the Freedom of Information Act which sets forth rules for FRA to make requested materials, information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of applications and proposals submitted by successful applicants may be released in response to FOIA requests. In addition, following the completion of the selection process and announcement of awards, FRA may publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for information withheld under the previous paragraph, FRA may also make application narratives publicly available or share application information within DOT or with other Federal agencies if FRA determines that sharing is relevant to the respective program's objectives.

Issued in Washington, DC.

Jennifer Mitchell,

Deputy Administrator.

[FR Doc. 2024–15357 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2024–0072]

Department of Transportation Equity Action Plan Update

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Request for Information (RFI).

SUMMARY: The Office of the Secretary of Transportation (OST) invites public comment on the most meaningful activities to advance equity that should be considered as part of DOT's 2024 update to its Equity Action Plan. The responses to this RFI will help the Department of Transportation (DOT, or the Department) understand the impact of our equity activities to date and inform what equity-related activities and performance metrics we prioritize through the Plan.

DATES: Comments are requested by August 14, 2024. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation,'' below, for more information about written comments.

Written Comments: Responses to this RFI are voluntary Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Except as provided below (''*confidential business information*''), all comments received into the docket will be made public in their entirety. The comments will be searchable 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 should not include information in your comment that you do not want to be made public. For information on DOT's Privacy Act compliance, see *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 to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Please email *Equity@dot.gov* or contact Kristin Wood at 774–293–2726 with questions. Office hours are from 8 a.m. to 5 p.m. EDT, Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION:

Through this Request for Information (RFI), the Department solicits input from the public on the following question:

(1) What activities being advanced through DOT's Equity Action Plan would be the most meaningful in advancing equity?

(a) What activities can be expanded?

(b) What new activities can DOT consider for the future?

This section includes additional background information related to DOT's Equity Action Plan that may be helpful in responding to this question.

The DOT Strategic Plan (available at *https://www.transportation.gov/dot-strategic-plan*) is a roadmap for the Department's implementation of six strategic goals, one of which is Equity. The Equity strategic goal states that the Department will ''reduce inequities across our transportation systems and the communities they affect'' and ''support and engage people and communities to promote safe, affordable, accessible, and multimodal access to opportunities and services while reducing transportation-related disparities, adverse community impacts, and health effects.''

In response to Executive Order (E.O.) 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government),* the Department developed its first Equity Action Plan (*https://www.transportation.gov/priorities/equity/actionplan*). It highlighted key actions that the Department will

undertake to expand access and opportunity to all communities while focusing on underserved, overburdened, and disadvantaged communities.

E.O. 14091, *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal),* directs all federal agencies to update their Equity Action Plans on an annual basis. Specifically, each update should include: the progress made by the agency on the actions, performance measures, and milestones highlighted in the preceding year's Equity Action Plan; potential barriers that underserved communities may face; strategies to address those barriers, and a description of how the agency intends to meaningfully engage with underserved communities. In response to E.O. 14091, the 2023 update to DOT's Equity Action Plan (*https://www.transportation.gov/priorities/equity/2023-equity-action-plan*) highlights DOT accomplishments and updated commitments to equity. Actions in the EAP fall under five focus areas, including four that carried over from the original Equity Action Plan: Wealth Creation; Power of Community; Proactive Intervention, Planning, and Capacity Building; Expanding Access; and a new Institutionalizing Equity focus area.

The Bipartisan Infrastructure Law (BIL; enacted November 15, 2021 as the Infrastructure Investment and Jobs Act) and Inflation Reduction Act (IRA; enacted August 16, 2022) make historic investments in the transportation sector, improving public safety and climate resilience, creating jobs across the country, and delivering a more equitable future. The Department is committed to applying an equity lens to implementation of BIL and IRA, including through actions described in our initial and updated Equity Action Plans.

Government-wide definitions of (a) equity, (b) underserved communities, and (c) disadvantaged communities have been established via Executive Order(s). DOT has adopted these government-wide definitions for the purpose of this RFI and our Equity Action Plan:

(a) The term ''equity'' means the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment, such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities. [Source: E.O. 14091.]

(b) The term ''underserved communities'' refers to those populations [included in the definition of ''equity''] as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in E.O. 13985. [Source: E.O. 14091.]

(c) The term ''disadvantaged community'' refers to a community that experiences disproportionately high and adverse health, environmental, climate related, economic, and other cumulative impacts. [Source: E.O. 14008, *Tackling the Climate Crisis at Home and Abroad, https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad*.]

In addition, DOT has adopted the following definitions of (d) overburdened community and (2) for the purpose of this RFI and our Equity Action Plan:

(d) The term ''overburdened community'' refers to minority, low-income, tribal, or Indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental and/or safety harms and risks. This disproportionality can be a result of greater vulnerability to environmental hazards, heightened safety risks, lack of opportunity for public participation, or other factors. [Source: *https://www.epa.gov/environmentaljustice/ej-2020-glossary*.]

(e) The term ''meaningful public involvement'' refers to a process that proactively seeks full representation from the community, considers public comments and feedback, and incorporates that feedback into a project, program, or plan. [Source: *https://www.transportation.gov/public-involvement*.]

DOT is in the process of preparing the 2024 Equity Action Plan update. The responses to this RFI will help the Department understand the impact of our equity activities to date and inform what we prioritize through this year's update to DOT's Equity Action Plan. Through this request, the Department seeks information from stakeholders in public agencies, academic researchers involved in the study of equity in transportation decision-making, advocacy, community-based organizations, and not-for-profit institutions and individuals working in the transportation sector or the field of equity, and State, local, Tribal, and territorial areas, and the public. A summary of input provided to the 2023 EAP update is available at: *https://www.transportation.gov/equity-RFI* and a webinar will be hosted on July 25, 2024.

Public Participation

How do I prepare and submit comments?

To ensure that your comments are filed correctly, please include the docket number of this document DOT–OST–2024–0072 in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including any attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the Agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

Any submissions containing Confidential Information must be delivered to DOT in the following manner:

- Submitted in a sealed envelope marked ''confidential treatment requested'';
- Document(s) or information that the submitter would like withheld from the public docket should be marked ''PROPIN'';
- Accompanied by an index listing the document(s) or information that the submitter would like the Departments to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and
- Submitted with a statement explaining the submitter's grounds for objecting to disclosing the information to the public.

DOT will treat such marked submissions as confidential under the FOIA and not include them in the public docket. DOT also requests that

submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. If the submitter cannot provide a non-confidential version of its submission, DOT requests that the submitter post a notice in the docket stating that it has provided DOT with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Will the Agency consider late comments?

DOT will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, DOT will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under *Written Comments.* The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov*.

Please note, this RFI is a planning document and will serve as such. The RFI should not be construed as policy, a solicitation for applications, or an obligation on the part of the government.

Issued in Washington, DC, on July 10, 2024.

Mariia Zimmerman,

Principal Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 2024–15456 Filed 7–12–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference through the Microsoft Teams Platform.

DATES: The meeting will be held Thursday, August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 214–413–6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, August 22, 2024, at 3:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information, please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce St. MC 1005, Dallas, TX 75242 or contact us at the website: *http://www.improveirs.org.*

The agenda will include the potential project referrals from the committees, and discussions on priorities the TAP will focus on for the 2024 year. Public input is welcomed.

Dated: July 5, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–15439 Filed 7–12–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, August 14, 2024.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Wednesday, August 14, 2024, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: July 5, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–15435 Filed 7–12–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, August 13, 2024.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements (TAC) Project Committee will be held Tuesday, August 13, 2024, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of

intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: July 5, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–15436 Filed 7–12–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, August 21, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, August 21, 2024, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: July 5, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–15434 Filed 7–12–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, August 8, 2024.

FOR FURTHER INFORMATION CONTACT: Ann Tabat at 1–888–912–1227 or (602) 636–9143.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Thursday, August 8, 2024, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ann Tabat. For more information, please contact Ann Tabat at 1–888–912–1227 or (602) 636–9143, or write TAP Office, 4041 N Central Ave., Phoenix, AZ 85012 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: July 5, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–15433 Filed 7–12–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, August 8, 2024.

FOR FURTHER INFORMATION CONTACT: Jose Cintron-Santiago at 1–888–912–1227 or 787–522–8607.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, August 8, 2024, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Jose Cintron-Santiago. For more information, please contact Jose Cintron-Santiago at 1–888–912–1227 or 787–522–8607, or write TAP Office, 48 Carr 165, Suite 2000, Guaynabo, PR 00968–8000 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: July 5, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–15437 Filed 7–12–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8912

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce

paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to credit to holders of tax credit bonds.

DATES: Written comments should be received on or before September 13, 2024 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 number 1545–2025 or Credit to Holders of Tax Credit Bonds, in the subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Credit to Holders of Tax Credit Bonds.

OMB Number: 1545–2025.

Form Number: 8912.

Abstract: Form 8912, Credit to Holders of Tax Credit Bonds, was developed to carry out the provisions of Internal Revenue Code sections 54 and 1400N(l). The form provides a means for the taxpayer to claim the credit for the following tax credit bonds: Clean renewable energy bond (CREB), New clean renewable energy bond (NCREB), Qualified energy conservation bond (QECB), Qualified zone academy bond (QZAB), Qualified school construction bond (QSCB), and Build America bond (BAB).

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms.

Estimated Number of Respondents: 50.

Estimated Time per Response: 13 hours, 47 minutes.

Estimated Total Annual Burden Hours: 689 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: 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.

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.

Approved: July 9, 2024.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2024–15429 Filed 7–12–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, August 8, 2024.

FOR FURTHER INFORMATION CONTACT: Kelvin Johnson at 1–888–912–1227 or 504–202–9679.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Thursday, August 8, 2024, at 4:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Kelvin Johnson. For more information, please contact Kelvin Johnson at 1–888–912–1227 or 504–202–9679, or write TAP Office, 1555 Poydras Street, Suite 12, New Orleans, LA 70112 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: July 5, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–15438 Filed 7–12–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Notice of call for Large Position Reports.

SUMMARY: The U.S. Department of the Treasury (Treasury) called for the submission of Large Position Reports by entities whose positions in the 4¾% Treasury Bonds of November 2043 equaled or exceeded $1.6 billion as of Tuesday, December 19, 2023, or Friday, December 29, 2023.

DATES: Reports must be received by 12:00 p.m. Eastern Time on Monday, July 15, 2024.

ADDRESSES: Reports may be submitted using Treasury's webform (available at *https://www.treasurydirect.gov/laws-and-regulations/gsa/lpr-form/*). Reports may also be faxed to Treasury at (202) 504–3788 if a reporting entity has difficulty using the webform.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Kevin Hawkins, John Garrison, or Luisa Jou-Penchev; Government Securities Regulations Staff, Department of the Treasury, at 202–504–3632 or *govsecreg@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION: In a public announcement issued on July 9, 2024, and in this **Federal Register** notice, Treasury called for Large Position Reports from entities whose positions in

the 4¾% Treasury Bonds of November 2043 (CUSIP 912810TW8) equaled or exceeded $1.6 billion as of Tuesday, December 19, 2023, or Friday, December 29, 2023. Entities must submit separate reports for each reporting date on which their positions equaled or exceeded the $1.6 billion reporting threshold. Entities with positions in this Treasury Bond below the reporting threshold as of the reporting dates are not required to submit Large Position Reports.

This call for Large Position Reports is pursuant to Treasury's large position reporting rules under the Government Securities Act regulations (17 CFR part 420), promulgated pursuant to 15 U.S.C. 78o–5(f). Reports must be received by Treasury before 12:00 p.m. Eastern Time on Monday, July 15, 2024, and must include the required positions and administrative information.

The 4¾% Treasury Bonds of November 2043 have a CUSIP number of 912810TW8, a STRIPS principal component CUSIP number of 912803GX5, and a maturity date of November 15, 2043.

The public announcement, a copy of a sample Large Position Report which appears in appendix B of the rules at 17 CFR part 420, supplementary formula guidance, and a series of training modules are available at *https://www.treasurydirect.gov/laws-and-regulations/gsa/lpr-reports/.*

Non-media questions about Treasury's large position reporting rules and the submission of Large Position Reports should be directed to Treasury's Government Securities Regulations Staff at (202) 504–3632 or *govsecreg@fiscal.treasury.gov.*

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1530–0064.

Joshua Frost,

Assistant Secretary for Financial Markets.

[FR Doc. 2024–15382 Filed 7–12–24; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 2, section 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC on July 30, 2024, at 9:00 a.m., of the following debt management advisory committee: Treasury Borrowing Advisory Committee.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. app. 2, section 10(d) and Public Law 103–202, section 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. app. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. app. 2, section 3. Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: July 9, 2024.

Frederick E. Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2024–15392 Filed 7–12–24; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Health Systems Research Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, that a meeting of the Health Systems Research (HSR) Merit Review Board (hereinafter, ''the Board'') will be held on Wednesday, August 28, 2024, via WebEx from 12–1:30 p.m. EST. The meeting will be partially closed to the public, with an open portion from 12–12:15 p.m. EST. The closed portion, from 12:15–1:30 p.m. EST, will be used for discussion, examination of and reference to the research applications and scientific review. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will also cover the scientific merit of each proposal and the qualifications of the personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), and amended by Public Law 94–409, closing the committee meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure that the VA HSR program promotes functional independence and improves the quality of life for impaired and disabled Veterans.

Board members will advise the Deputy Chief Research and Development Officer for Investigators, Scientific Review and Management (ISRM) and the Chief Research and Development Officer on the scientific and technical merit, mission relevance and protection of human and animal

subjects of the proposals submitted to HSR. The Board does not consider grants, contracts or other forms of extramural research.

Members of the public may attend the open portion of the meeting via WebEx, from 12–12:15 p.m. EST, in listen-only mode, as the time-limited open agenda does not allow for public comment presentations. To attend the open portion of the meeting, the public may dial the Webex phone number (1–833–558–0712) and entering the meeting number/access code (2829 182 9834).

Written comments from members of the public must be mailed to Tiffin Ross-Shepard, Designated Federal Officer, HSR, Department of Veterans Affairs (14RDH), 810 Vermont Avenue NW, Washington, DC 20420, or to *Tiffin.Ross-Shepard@va.gov at least five days before the meeting.* The public comments will be shared with the Board members. The public may not attend the closed portion of the meeting, as disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), and amended by Public Law 94–409, closing the committee meeting is in accordance with title 5 U.S.C. 552b(c)(6) and (9)(B).

Dated: July 9, 2024.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–15422 Filed 7–12–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0399]

Agency Information Collection Activity Under OMB Review: Student Beneficiary Report—REPS (Restored Entitlement Program for Survivors)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0399.''

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION:

Title: Student Beneficiary Report—REPS (Restored Entitlement Program for Survivors).

OMB Control Number: 2900–0399 *https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Extension of a previously approved collection.

Abstract: VA Form 21P–8938–1 is primarily used to verify that a surviving child who is receiving REPS benefits based on school-child status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. VA Form 21P–8938–1 is generated by VA's central computer system each March and sent to all student beneficiaries. If the completed form is not received by the end of May, the beneficiary is sent a system-generated due process letter with another VA Form 21P–8938–1. No changes have been made to this form. The respondent burden has remained the same.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 40539, May 10, 2024, page 40539.

Affected Public: Individuals or Households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,200.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–15457 Filed 7–12–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Monday,

No. 135 July 15, 2024

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 1000

Self-Governance PROGRESS Act Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 1000

[Docket No. BIA–2024–0001; 245A2100DD/AAKC001030/A0A501010.999900]

RIN 1076–AF62

Self-Governance PROGRESS Act Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of the Interior (Department), Office of the Assistant Secretary for Indian Affairs, proposes to revise the regulations that implement Tribal Self-Governance, as authorized by title IV of the Indian Self Determination and Education Assistance Act. This proposed rule has been negotiated among representatives of Self-Governance and non-Self Governance Tribes and the Department.

DATES:

• *Proposed Regulations:* Please submit your comments on or before August 22, 2024.

• *Tribal Government-to-Government Consultations:* The Department will conduct in-person consultation sessions with federally recognized Tribes on July 15, 2024, July 17, 2024, and July 19, 2024. Additionally, the Department will conduct a virtual consultation session with federally recognized Tribes on July 22, 2024.

• *Information Collection Requirements:* If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB (see ''Information Collection Requirements'' section below under **ADDRESSES**) by August 14, 2024.

ADDRESSES: All comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. You may submit comments by any one of the following methods.

• *Federal eRulemaking Portal:* Please visit *https://www.regulations.gov.* Enter ''RIN 1076–AF67'' in the web page's search box and follow the instructions for submitting comments.

• *Email:* Please send comments to *consultation@bia.gov* and include ''RIN 1076–AF62—25 CFR part 1000'' in the subject line of your email.

• *Mail:* Please mail comments to Department of the Interior, Office of Regulatory Affairs and Collaborative Action, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104.

• *Accessibility:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals can obtain this document in an alternate format, usable by people with disabilities, at the Office of the Assistant Secretary—Indian Affairs, Room 4660, 1849 C Street NW, Washington, DC 20240.

• *Information Collection Requirements:* Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to the Office of Information and Regulatory Affairs (OIRA) through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202405-1076-004* or by visiting *https://www.reginfo.gov/public/do/PRAMain* and selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior.''

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action (RACA), Office of the Assistant Secretary—Indian Affairs, Department of the Interior, telephone (202) 738–6065, *consultation@bia.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary—Indian Affairs (Assistant Secretary; AS–IA) by 209 Department Manual 8 (209 DM 8).

Table of Contents

I. Background

A. Statutory Authority

On October 21, 2020, the Practical Reforms & Other Goals to Reinforce the Effectiveness of Self Governance & Self Determination for Indian Tribes Act (PROGRESS Act) was signed into law. *See* Public Law 116–180. The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301, which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses the Department's Tribal Self-Governance Program.

Section 413 of Public Law 116–180, 25 U.S.C. 5363 directs the Secretary to promulgate regulations using the negotiated rulemaking process to carry out subchapter IV of the ISDEAA, the Department's Tribal Self-Governance Program. Section 413(a)(3) of Public Law 116–180 establishes expiration of authority for the promulgation of such regulations. A Committee was established and commenced with the negotiated rulemaking process for this proposed rule. On April 20, 2023, the Committee's authority to promulgate regulations to meet the directive of the

Progress Act expired under section 413(a)(3) of the same statute, thus leaving the Committee with no authority to continue the negotiated rulemaking for this proposed rule. Congress, however, on September 30, 2023, extended the Committee's authority until December 21, 2024. Public Law 118–15 at section 2102.

The Department is requesting comment on this proposed rule to update regulations implementing Tribal Self-Governance at the Department. While the proposed rule does incorporate terms and processes that may be common to self-governance at the Department of Health and Human Services (HHS) authorized by Title V of ISDEAA, and the Department of Transportation (DOT) authorized by 23 U.S.C. 207, it is not the intent of this proposed rule to define or regulate any term or process that is applicable to HHS or DOT, even where such terms or processes are common between the agencies. The proposed rule should not be construed to bind HHS or DOT to any particular interpretation of a term or process. Accordingly, we seek comment on how to incorporate this distinction into a final rule.

This proposed rule has been negotiated by representatives of Self-Governance and non-Self-Governance Tribes, and the Department. The intended effect is to transfer to participating Tribes control of, funding for, and decision making concerning certain Federal programs, consistent with updates contained in the PROGRESS Act. The Department anticipates this proposed rule will have a negligible cost burden for Tribes currently participating in Self-Governance, some startup costs for Tribes not currently participating in Self-Governance, and no new costs to the Federal Government.

B. Negotiated Rulemaking Process

The PROGRESS Act directed the Secretary to adapt negotiated rulemaking procedures regarding the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. The PROGRESS Act also called for a negotiated rulemaking committee (Committee) to be established under 5 U.S.C. 565, with membership comprised only of representatives of Federal agencies and Tribal governments, with the Office of Self-Governance (OSG) serving as the lead agency for the Department. The Secretary charged the Committee with developing proposed regulations for the Secretary's implementation of the PROGRESS Act's provisions regarding the Department's Self-Governance Program.

The Department published a **Federal Register** notice on February 1, 2021, 86 FR 7656, announcing the intent to establish a committee and soliciting nominations for membership on the Committee. The Department published a **Federal Register** notice on May 18, 2022, 87 FR 30256, announcing the formation of the committee and identifying 14 Tribal representatives, and 12 Federal representatives.

To fulfill the requirements for negotiated rulemaking and the Federal Advisory Committee Act, representatives reflect those currently participating in the Tribal Self-Governance Program and those that are not currently participating in, but are interested in, the Tribal Self-Governance Program. In addition, Tribal representatives reflect a balance in terms of geographical location and size of the Tribe. Membership consists of only representatives of Federal and Tribal governments, with OSG serving as the lead agency.

The Committee met fifteen times to negotiate the proposed regulations. The Committee members and technical advisors organized themselves into two subcommittees and used the scheduled subcommittee meetings to develop draft materials and exchange information. The Committee's meeting minutes, and any materials approved by the full Committee, were made a part of the official record.

The Committee reached consensus, as reflected by votes documented in its meeting minutes, on:

- Subpart A (General Provisions);
- Subpart B (Selection of Additional Tribes for Participation in Tribal Self-Governance);
- Subpart C (Planning and Negotiation Grants for BIA Programs);
- Subpart D (Financial Assistance for Planning and Negotiations Activities for Non-BIA Bureau Programs);
- Subpart H (Negotiation Process);
- Subpart I (Final Offer);
- Subpart J (Waiver of Regulations);
- Subpart L (Federal Tort Claims);
- Subpart M (Reassumption);
- Subpart N (Retrocession);
- Subpart O (Trust Evaluation);
- Subpart P (Reports);
- Subpart Q (Operational Provisions);
- Subpart S (Conflicts of Interest); and
- Subpart T (Tribal Consultation Process).

The Committee did not reach consensus on:

- Subpart E (Compacts);
- Subpart F (Funding Agreements for BIA Programs);
- Subpart G (Funding Agreements for Non-BIA Programs);
- Subpart K (Construction); and
- Subpart R (Appeals).

Regardless of the consensus reached thus far, the Department will consider all relevant comments submitted and will make modifications to the proposed rule as the Department determines is appropriate. The Department expressly reserves its right to modify the final rule.

II. Subpart-by-Subpart Summary of the Proposed Rule

The following summary describes each subpart of the Department's proposed regulations to implement the PROGRESS Act. Except for four areas of disagreement discussed below, the proposed regulations are the product of consensus.

A. Subpart A—General Provisions

This subpart contains the authority, purpose and scope of the proposed rule, and the Congressional and Secretarial policies that will guide the implementation of the ISDEAA, as amended by the PROGRESS Act, by the Secretary and the various bureaus of the Department. The subpart also defines terms used throughout the proposed rule consistent with the PROGRESS Act.

This subpart further clarifies the effect of 25 CFR part 1000 on existing Tribal rights, including Tribal sovereign immunity from suit, the United States' trust responsibility, a Tribe's choice to participate in self-governance, or the issuance of awards by other departments or agencies to Tribes. Additionally, this subpart identifies the application of any agency circular, policy, manual, guidance, or rule adopted by the Department on self-governance Tribes/Consortia.

B. Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

This subpart describes the steps a Tribe/Consortium must take to participate in Tribal self-governance and the selection process and eligibility criteria that the Secretary will use to decide whether a Tribe/Consortium may participate. Under the PROGRESS Act, a Tribe/Consortium is eligible to participate in self-governance if it submits documentation to OSG demonstrating: (1) successful completion of a planning phase; (2) a request to participate in self-governance by a Tribal resolution and/or final official action; and (3) financial stability and financial management capability through evidence of having no uncorrected significant and material

audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency for the three fiscal years preceding the date on which the Tribe/Consortium requests participation. When a Tribe/Consortium submits documentation to participate in self-governance, this proposed rule requires the OSG within 45 days to: (1) select and notify the Tribe/Consortium to participate in self-governance; or (2) notify the Tribe/Consortium that the documentation submitted to participate in self-governance is incomplete.

The OSG Director may select up to 50 eligible Tribes or Consortia for negotiation. If there are more Tribes selected to negotiate in any given year, this proposed rule provides that the first 50 Tribes/Consortia who apply, and are determined to be eligible, will have the option to participate.

This proposed rule also stipulates that a Tribe/Consortium may be selected to negotiate a funding agreement for non-Bureau of Indian Affairs (BIA) programs that are otherwise available to Tribes without first negotiating a funding agreement for BIA programs. However, to negotiate for a non-BIA program under 25 U.S.C. 5363(c) for which the Tribe/Consortium has only a geographic, cultural, or historical connection, the ISDEAA requires that the Tribe/Consortium must first have a funding agreement with the BIA under 25 U.S.C. 5363(b)(1) or any non-BIA bureau under 25 U.S.C. 5363(b)(2). (The term ''programs'' as used in this proposed rule refers to complete or partial programs, services, functions, or activities (PSFAs)).

This subpart also describes what happens when a Tribe wishes to withdraw from a Consortium's funding agreement. In such instances, the withdrawing Tribe must notify the Consortium, appropriate Department bureau, and OSG of its intent to withdraw 180 days before the effective date of the next funding agreement. Unless otherwise agreed to, the effective date of the withdrawal will be the earlier date of one year after the date of submission of the request, or when the current agreement expires.

In completing the withdrawal, the Consortium's funding agreement must be reduced by that portion of funds attributable to the withdrawing Tribe on the same basis or methodology upon which the funds were included in the Consortium's funding agreement. If such a basis or methodology does not exist, then the Tribe, the Consortium, appropriate Department bureau, and OSG must negotiate an appropriate amount.

C. Subpart C—Planning and Negotiation Grants

This subpart describes the criteria and procedures for awarding various self-governance negotiation and planning grants. These grants are discretionary and will be awarded by the OSG Director. The award amount and number of grants depends upon Congressional appropriations. If funding in any year is insufficient to meet total requests for grants and financial assistance, priority will be given first to negotiation grants and second to planning grants.

Negotiation grants are non-competitive. In order to receive a negotiation grant, a Tribe/Consortium must first be selected to join self-governance and then submit a letter affirming its readiness to negotiate and requesting a negotiation grant. This subpart further provides that a Tribe/Consortium may elect to negotiate a self-governance agreement if selected without applying for or receiving a negotiation grant. Planning grants will be awarded to Tribes/Consortia requesting financial assistance in order to complete the planning phase requirement for joining self-governance.

D. Subpart D—Financial Assistance for Planning and Negotiations Activities for Non-BIA Programs

This subpart describes the additional requirements and criteria applicable to receiving financial assistance to assist Tribes/Consortia with planning and negotiating for funding agreements involving non-BIA programs. This financial assistance is available to any Tribe/Consortium that:

(a) Applied to participate in self-governance;

(b) Has been selected to participate in self-governance; or

(c) Has negotiated and entered into an existing funding agreement.

Subject to the availability of funds, this subpart requires the Secretary to publish a notice in the **Federal Register** that includes the number of available grants, application process, award criteria, and designated point-of-contact for each non-BIA bureau. This financial assistance will support information gathering, analysis, and planning activities that may involve consulting with appropriate non-BIA bureaus, and negotiation activities. This subpart also provides requirements for communicating award decisions to applying Tribes/Consortia.

E. Subpart E—Compacts

The Committee proposes to insert this new subpart to implement section 404 of title IV, as amended, which requires the Secretary to enter into a written compact with each participating Tribe/Consortium. The previous version of title IV included no such requirement and compacts were negotiated and executed at the option of the participating Tribe/Consortium.

The current rule at 25 CFR part 1000 that became effective on January 16, 2001 (''current rule''), includes provisions addressing compacts at §§ 1000.161 through 1000.165. The Committee proposes to amend and move those sections to the new subpart E (Compacts) and to include additional sections. This new subpart is proposed to be inserted before the respective subparts for funding agreements because compacts are applicable to funding agreements both for BIA programs and for non-BIA programs.

The current rule also includes a model format for a compact at Appendix A. The Committee proposes to omit the model format for a compact and Appendix A from this proposed rule. In lieu of a model format, compacts will be negotiated and executed in accordance with title IV, as amended, and with this proposed rule.

This subpart describes self-governance compacts and the minimum content requirements of a self-governance compact. Unlike a funding agreement, parts of a compact apply to all bureaus within the Department rather than a single bureau. Therefore, a Tribe/Consortium needs only to negotiate and execute one self-governance compact to participate in self-governance.

This subpart also establishes a compact's effective term and addresses how a compact may be amended. Further, this subpart clarifies that a Tribe/Consortium who executed a compact prior to the enactment of the PROGRESS Act has the option to either retain its existing compact, in whole or in part, to the extent that the provisions are not directly contrary to any express provisions of the PROGRESS Act or negotiate a new compact.

F. Subpart F—Agreements for BIA Programs

This subpart describes the components of a funding agreement for BIA programs. The current rule includes ''Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs.'' The Committee proposes to amend the title of the subpart and move it within this proposed rule. The title of the subpart is proposed to be amended to ''Funding Agreements for BIA Programs'' because title IV now excludes the term ''Annual Funding

Agreements'' and uses in its place, ''Funding Agreements.'' The acronym ''BIA'' is proposed in lieu of ''Bureau of Indian Affairs'' because BIA is now proposed as a defined term within subpart A (General Provisions). The Committee proposes to relocate the subpart from subpart E of the current rule to become subpart F of the proposed rule because a new subpart E for compacts is proposed to be inserted.

A funding agreement is a legally binding and mutually enforceable written agreement between a Tribe/Consortium and the Secretary. Funding agreements must include at a minimum, but are not limited to, provisions specifying the programs transferred to the Tribe/Consortium, providing for the Secretary to monitor the performance of trust functions administered by the Tribe/Consortium, providing the funding amount(s), providing a stable base budget, and specifying the funding agreement's effective date.

Parties to a funding agreement can mutually agree to include additional provisions and/or include and incorporate by reference additional documents such as funding tables or construction project agreements. Additionally, Tribes/Consortia may elect to negotiate a funding agreement with a term that exceeds one year, subject to the availability of appropriations.

This subpart also provides that a Tribe/Consortium with a funding agreement executed before the enactment of the PROGRESS Act has the option to either retain that funding agreement, in whole or in part, to the extent that the provisions are not directly contrary to any express provisions of the PROGRESS Act or negotiate a new funding agreement.

This subpart establishes that a funding agreement shall remain in full force and effect following the end of its term until a subsequent funding agreement is executed. When a subsequent funding agreement is executed, its terms will be retroactive to the term of the preceding funding agreement for purposes of calculating the amount of funding for the Tribe/Consortium.

This subpart states that a Tribe/Consortium may include BIA-administered programs in its funding agreement regardless of the BIA agency or office performing the program. The Secretary must provide to the Tribe/Consortium:

(a) Funds equal to what the Tribe/Consortium would have received under contracts and grants under title I of Public Law 93–638 (25 U.S.C. 5321, *et seq.*);

(b) Any funds specifically or functionally related to providing services to the Tribe/Consortium by the Secretary; and

(c) Any funds that are otherwise available to Indian Tribes for which appropriations are made to other agencies other than the Department and transferred to the Department as directed by law, an Interagency Agreement, or other means.

Except for construction programs or projects governed by subpart K (Construction), or where a statute contains specific limitations on the use of funds, a Tribe/Consortium may redesign or consolidate programs and reallocate funds in any manner the Tribe/Consortium deems to be in the best interest of the Indian community being served without the Secretary's approval except for programs described in 25 U.S.C. 5363(b)(2) or (c), or that involve a request to waive a Department regulation. However, a redesign or consolidation may not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law.

In determining the funding amount available to a Tribe/Consortium, this subpart identifies funds that are used to carry out inherent Federal functions [1] that cannot be included in a funding agreement. This subpart also establishes the process for determining the funding amount to carry out inherent Federal functions and clarifies that the amount withheld to carry out inherent Federal functions can be negotiated between the Secretary and a Tribe/Consortium.

This subpart defines Tribal shares as the amount determined for that Tribe/Consortium that supports any program within the BIA, the Bureau of Indian Education (BIE), the Bureau of Trust Funds Administration (BTFA), or the Office of the Assistant Secretary for Indian Affairs and are not required by the Secretary for the performance of an inherent Federal function. Tribal share amounts may be determined by either:

(a) A formula that has a reasonable basis in the function or service performed by the BIA office and is consistently applied to all Tribes served by the area and agency offices; or

(b) On a Tribe-by-Tribe basis, such as competitive grant awards or special project funding.

[1] The Department notes that 25 U.S.C. 5363(k) uses the phrase ''inherently Federal'' while 25 U.S.C. 5367(c) uses the phrase ''inherent Federal.'' It is unclear why Congress used differing phrases, but the proposed rule generally uses the phrase ''inherent Federal,'' except where a provision directly follows statutory language. The Department does not view the difference between the two phrases as meaningful.

Funding amounts may be modified during the term of a funding agreement to adjust for certain Congressional actions, correct a mistake, or if there is mutual agreement to do so.

This subpart also defines stable base budgets as the amount of recurring funding to be transferred to the Tribe/Consortium for a period specified in the funding agreement. Stable base budgets are derived from:

(a) A Tribe/Consortium's Public Law 93–638 contract amounts;

(b) Negotiated amounts of agency, area, and central office funding;

(c) Other recurring funding;

(d) Special projects, if applicable;

(e) Programmatic shortfall;

(f) Tribal priority allocation increases and decreases;

(g) Pay costs and retirement cost adjustments; and

(h) Any other inflationary cost adjustments.

Stable base budgets do not include any non-recurring program funds, construction and wildland firefighting accounts, Congressional earmarks, or other funds specifically excluded by Congress.

A stable base budget is established at the request of the Tribe/Consortium and will be included in BIA's budget justification for the following year, subject to Congressional appropriation. Once stable base budgets are established, a Tribe/Consortium need not renegotiate these amounts unless it wants to. If the Tribe/Consortium wishes to renegotiate, it also would be required to renegotiate all funding included in the funding agreement on the same basis as all other Tribes and is eligible for funding amounts of new programs or available programs not previously included in the funding agreement on the same basis as other Tribes. Stable base budgets must be adjusted for certain Congressional actions, to correct a mistake, or if there is mutual agreement.

G. Subpart G—Funding Agreements for Non-BIA Programs

This subpart describes program eligibility, funding for, and terms and conditions relating to Self-Governance funding agreements covering non-BIA programs that can help further Secretarial co-stewardship objectives as set forth in Joint Secretarial Order No. 3403. This section was renamed from Subpart F, as detailed in the Committee Report. Funding agreements for non-BIA programs are legally binding and mutually enforceable agreements between a bureau and a Tribe/Consortium participating in the self-governance program that contain a

description of that portion or portions of a bureau program that are to be performed by the Tribe/Consortium; and associated funding, terms and conditions under which the Tribe/Consortium will assume a program, or portion of a program. Funding agreements may include Federal programs, services, functions, or activities administered by the Department other than through the BIA that are otherwise available to Indian tribes or Indians and may also include other programs, services, functions, and activities, or portions thereof which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact. This subpart contains a definition of which functions may be considered ''inherently Federal'' for purposes of 25 U.S.C. 5363(k) and a provision making non-mandatory contract support costs associated with administration of the programs, services, functions, or activities that are transferred in non-BIA agreements. The Committee did not achieve consensus on these two provisions.

H. Subpart H—Negotiation Process

The current rule includes ''Subpart G—Negotiation Process for Annual Funding Agreements.'' The Committee proposes to amend the title of this subpart and move it within this proposed rule. The subpart title is proposed to be amended to ''Negotiation Process'' because the amended subpart addresses the process for negotiating compacts and funding agreements. The location of the subpart within this proposed rule is to be moved from subpart G of the current rule to become subpart H because a new subpart E for compacts is proposed to be inserted. Items addressed in subpart H of the current rule are proposed to be addressed in proposed new subpart Q (Operational Provisions).

Sections 1000.161 through 1000.165 of the current rule addresses the negotiation of compacts and are proposed to be amended and moved to the new subpart E (Compacts).

This subpart establishes the process and timelines for negotiating a self-governance compact with the Secretary and a funding agreement with any Departmental bureau. Under this subpart, the negotiation process consists of two phases, an information phase and a negotiation phase.

In the information phase, any Tribe/Consortium that has been selected to participate in the self-governance program may submit a written request clearly identified as a ''Request to Initiate the Information Phase,'' which notifies the Secretary of a Tribe/Consortium's interest in negotiating for a program(s) and requesting information about the program(s). Although this phase is not mandatory, it is expected to facilitate successful negotiations by providing for a timely exchange of information on the requested programs. This subpart establishes the information a Tribe/Consortium is encouraged to include in its Request to Initiate the Information Phase and the steps a bureau must take after receiving a request.

The negotiation phase establishes detailed timelines and procedures for conducting negotiations with Tribes that have been selected into the self-governance program, including the minimum issues that must be addressed at negotiation meetings. A Tribe/Consortium initiates this phase by submitting a Request to Initiate the Negotiation Phase. This subpart also establishes the required response that the Secretary must provide a Tribe/Consortium after receipt of a Request to Initiate the Negotiation Phase, including identifying the lead Federal negotiator. Further, this subpart establishes the process for finalizing and executing a compact and/or funding agreement when the parties are in agreement on such terms and conditions following the completion of negotiations.

This subpart also establishes proposed rules for the negotiation process for subsequent funding agreements. A subsequent funding agreement is a funding agreement negotiated with a particular bureau after an existing agreement with that bureau. The process for negotiating a subsequent agreement is the same as the process provided in this subpart for funding agreements. The Committee expects, however, that subsequent funding agreements will build upon the prior funding agreements. As such, most provisions of the funding agreement will carry forward and not require renegotiation. This will result in an expedited and simplified negotiation process.

I. Subpart I—Final Offer

The Committee proposes to insert this new subpart to implement section 406(c) of title IV, as amended by the PROGRESS Act, 25 U.S.C. 5366(c), that prescribes the process to be followed if the Secretary and the participating Tribe/Consortium are unable to come to agreement, in whole or in part, on the terms of a compact or funding agreement during negotiations. The previous version of title IV included no such provisions, nor does the current rule.

The new subpart is proposed to be inserted at this location to immediately follow the proposed amended subpart H for the negotiation process. Doing so allows the reader to move sequentially from the negotiation process to determine options for next steps if those negotiation efforts do not result in agreement.

This subpart explains the final offer process provided by the Act for resolving disputes when the Secretary and a Tribe/Consortium are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels) during a negotiation. Under this subpart a Tribe/Consortium may submit a final offer to resolve these disputes. A final offer must be emailed or mailed to the Director at OSG's headquarters. A valid email address will be provided in the final rule. This proposed rule uses the placeholder ''[TBD]''.

A final offer under this subpart must contain a description of the disagreement, the Tribe/Consortium's final proposal to resolve the disagreement (including any proposed terms for a compact, funding agreement, or amendment), and the name and contact information for the Tribe's/Consortium's authorized official.

In accordance with 25 U.S.C. 5366(c)(6), the Secretary may reject all or part of a final offer for one of six specified reasons. If the Secretary does not act on a final offer within 60 days, the final offer is accepted automatically by operation of law for any compact or funding agreement except as to its application to a program described under section 403(c) of title IV. Final offers with respect to any program described under section 403(c) of title IV that the Secretary does not act on within 60 days are rejected automatically by operation of law. This subpart also addresses what happens if the Secretary rejects all or part of a final offer, including provision of technical assistance to overcome a rejection, the ability to appeal a rejection, and the portions of a final offer not in dispute taking effect.

J. Subpart J—Waiver of Regulations

This subpart implements 25 U.S.C. 5363(i)(2)(A) that authorizes the Secretary to waive all Department regulations governing programs included in a funding agreement, as identified by the Tribe/Consortium.

This subpart also provides timelines, explains how a Tribe/Consortium applies for a waiver, the basis for granting or denying a waiver request, the documentation requirements for a decision, and establishes a process for

resubmittal of a Tribe/Consortium's request in the event of the Secretary's denial of a waiver request.

The basis for the Secretary's denial of a waiver request must be predicated on a prohibition of Federal law.

K. Subpart K—Construction

This subpart applies to all construction programs and projects, both BIA and non-BIA. The subpart specifies which construction program activities are subject to subpart K, such as design, construction management services, actual construction; and which are not, such as planning services, operation and maintenance activities, and certain construction programs that cost less than $100,000. All provisions of the proposed rule apply to this subpart except where such provisions are inconsistent; in such case the regulatory provisions of this subpart will govern.

This subpart specifies the roles and responsibilities of the Tribe/Consortium and the Secretary in construction programs, including environmental determinations, performance, changes, monitoring, inspections, and reassumption. This subpart details the process by which a Tribe/Consortium, at its election and with the approval of the Secretary, designates a certifying Tribal officer to represent the Tribe/Consortium and accepts the jurisdiction of the United States courts for the purpose of enforcing the responsibilities of the certifying Tribal officer in order for the certifying Tribal officer to assume some responsibilities of the official under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and related provisions of other laws and regulations.

While the proposed text in this subpart reflects the consensus of the committee, subsequent to the approving its report to the Secretary, the Council on Environmental Quality (CEQ) revised its NEPA implementing regulations, 40 CFR parts 1500 through 1508, which are effective July 1, 2024.[2] Therefore, DOI invites comment on whether to revise the proposed regulatory text in any final rule for consistency with NEPA and the NEPA implementing regulations. For example, updating § 1000.1390 to incorporate text from and for consistency with 42 U.S.C. 4332(2)(E) and 40 CFR 1506.6(a), which direct agencies to make use of ''high-quality information, including reliable data and resources;'' (2) updating § 1000.1385(a)(2) to incorporate text making clear that NEPA requires agencies to assess ''reasonably foreseeable environmental effects'' of a proposed agency action, not all potential effects, for consistency with 42 U.S.C. 4332(2)(C)(i) and the definition of ''effects'' in 40 CFR 1508.1(i); and (3) updating § 1000.1385(a)(5) to state that in applying a categorical exclusion under NEPA, evaluate whether extraordinary circumstances exist, in which a normally excluded project may have a significant effect, and therefore requires preparation of an environmental assessment or environmental impact statement, for consistency with 40 CFR 1501.4. DOI seeks public comment on these and any other edits that the public considers appropriate for consistency with NEPA and the NEPA implementing regulations.

Federal Acquisition Regulations provisions are specifically not incorporated into this proposed rule; however, they may be negotiated by the parties in the funding agreement. Also, construction project agreements, made part of a funding agreement, must address applicable Federal laws, program statutes, and regulations. In addition to requirements for all funding agreements referenced in subpart F (Funding Agreements for BIA Programs), other provisions are added for construction project agreements and programs and funding agreements that include a construction project or program to implement the requirements of the PROGRESS Act, including health and safety standards, brief progress reports, financial reports, and suspension of work when appropriate. Building codes appropriate for the project must be used and the Federal agency must notify the Tribe when Federal standards are appropriate for any project.

Lastly, this subpart provides that the Secretary may accept funds from other departments for construction projects or programs, subject to an interagency agreement between the Secretary, with Tribal concurrence.

L. Subpart L—Federal Tort Claims

This subpart explains the applicability of the Federal Tort Claims Act.

M. Subpart M—Reassumption

Reassumption is the federally initiated action of reassuming control of Federal programs formerly performed by a Tribe/Consortium. This subpart explains the types of reassumption authorized under title IV, as amended by the PROGRESS Act, including the rights of a Consortium member, the types of circumstances necessitating reassumption, and Secretarial responsibilities including prior notice requirements and other procedures. The subpart explains what is meant by imminent jeopardy to trust assets, natural resources, and public health and safety that may be grounds for reassumption.

This subpart also describes the hearing rights a Tribe/Consortium has before or after reassumption by the Secretary, the activities to be performed after reassumption has been completed, and the effect of reassumption on other provisions of a funding agreement.

N. Subpart N—Retrocession

Retrocession is the Tribally-initiated voluntary action of returning control of certain programs to the Federal Government. This subpart defines retrocession, including how Tribes/Consortia may retrocede, the effect of retrocession on future funding agreement negotiations, and Tribal/Consortium obligations regarding the return of Federal property to the Secretary after retrocession.

O. Subpart O—Trust Evaluation

This subpart establishes a procedural framework for the Secretary's annual trust evaluation mandated by the PROGRESS Act. The purpose of the Secretary's annual trust evaluation is to ensure that trust functions assumed by Tribes/Consortia are performed in a manner that does not place trust assets in imminent jeopardy.

Imminent jeopardy of a physical trust asset or natural resource (or their intended benefits) exists where there is an immediate threat and likelihood of significant devaluation, degradation, or loss to such asset. Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by Tribal action or inaction or as otherwise provided in a funding agreement.

This subpart requires the Secretary's designated representative to prepare a written report for each funding agreement under which trust functions are performed by a Tribe. This proposed rule also authorizes a review of Federal performance of residual and nondelegable trust functions affecting trust resources. The name of this subpart has been changed from ''Trust Evaluation Review'' to ''Trust Evaluation.'' It was redundant to have both evaluation and review in the title.

[2] See Council on Environmental Quality (CEQ), NEPA Implementing Regulations Revisions Phase 2, Final Rule, 88 FR 35442 (May 1, 2024).

P. Subpart P—Reports

This subpart describes the report on self-governance that the Secretary prepares annually for transmittal to Congress. It also includes the requirements for the annual report that Tribes/Consortia submit to the Secretary and other data requirements the Secretary may request of Tribes/Consortia. The issue related to the inclusion of BIE in the BIA programs for purposes of the reporting requirements surfaces in this subpart and is addressed in subpart A (General Provisions).

Q. Subpart Q—Operational Provisions

The current rule includes ''Subpart Q—Miscellaneous Provisions.'' The Committee proposes to amend the title of this subpart to ''Operational Provisions'' to be more descriptive and instructive to the reader and to bring consistency with regulations promulgated at 42 CFR subchapter M part 137-Tribal Self-Governance under the Indian Health Service as authorized by title V of the ISDEAA, as amended.

The proposed changes to this subpart address many facets of self-governance not covered in the other subparts. Issues covered include the applicability of various laws such as the Freedom of Information Act (FOIA), the Privacy Act, the Prompt Payment Act, and the Single Agency Audit Act, applicable provisions of OMB circulars, how funds are handled in various situations, including carryover of funds, savings from programs, and the use of funds to meet matching or cost participant requirements under other laws.

Certain provisions of this subpart are proposed to be amended to become current with the PROGRESS Act, and with applicable regulations promulgated by OMB at 2 CFR part 200. References to outdated OMB circulars within this subpart are proposed to be updated throughout. New sections within this subpart are proposed to address new provisions within the Act, as amended, such as claims against a Tribe/Consortium in relation to disallowance of costs, and limitation of costs.

R. Subpart R—Appeals

This subpart prescribes the process Tribes/Consortia may use to resolve disputes with the Department arising before or after execution of a funding agreement or compact and certain other disputes related to self-governance.

S. Subpart S—Conflicts of Interest

This subpart sets out the minimum requirements a Tribe/Consortium must have in place, pursuant to Tribal law and procedures, to address conflicts of interest, including organizational and personal conflicts.

T. Subpart T—Tribal Consultation Process

This subpart describes the process for engaging in consultations related to self-governance with Tribes/Consortia. The current rule includes ''Subpart I—Public Consultation Process.'' The Committee proposes to move and rename this subpart to reflect that the subpart applies to Tribal consultation, and to conform to more recent Federal and Department policy on Tribal consultation. Under this subpart, consultations related to self-governance commenced after this rule's effective date, should it become final, will comply with the Tribal consultation process outlined in the revised version of this subpart, and such previous regulations governing public consultation shall be superseded.

This subpart establishes when the Secretary shall consult on matters related to self-governance and identifies that consultation will occur: (1) to determine eligible programs for inclusion in a funding agreement; (2) to establish programmatic targets for the inclusion of non-BIA programs in funding agreements; and (3) on any secretarial action with Tribal implications on matters related to self-governance. This subpart also establishes the applicable process for engaging in Tribal consultations, which is inspired by the President's November 30, 2022, Memorandum on Uniform Standards for Tribal Consultation, and the Department's current Departmental Manuals.

This subpart also establishes guiding principles applicable to Tribal consultation related to self-governance. Additionally, this subpart requires the Secretary to provide notice of upcoming consultations to Tribes/Consortia, allow written comments, and develop a record reflecting a Tribal consultation. Finally, this subpart establishes how the Secretary will handle confidential or sensitive information provided by a Tribe/Consortium during a consultation.

The Committee agreed to require at least 30 days' notice to Tribes/Consortia prior to any planned consultation sessions. However, the Committee recognizes that situations may occur that require the need for Tribal consultation on an expedited basis to address urgent issues. Therefore, the Committee expects that the Secretary could waive applicable notice requirements at the request of a Tribe/Consortium pursuant to subpart J (Waiver of Regulations) in such urgent situations. However, the Committee views the requirement for 30 days' notice as the norm and expects any such waivers to be at the request of a Tribe/Consortium.

III. Areas of Disagreement

The Committee did not reach consensus on four issues. These include: (1) the minimum contents that must be included in a compact and funding agreement; (2) inclusion of language about which functions may be considered ''inherently Federal'' for purposes of 25 U.S.C. 5363(k); (3) whether certain responsibilities pursuant to NEPA and related statutes are ''inherent Federal functions;'' and (4) when a Tribe/Consortium may choose to pursue an administrative appeal with the appropriate bureau head/Assistant Secretary as an alternative path to filing an administrative appeal with the Interior Board of Indian Appeals (IBIA).

Each area of disagreement is summarized below, in order, by subpart and section, as appropriate. To the extent a disagreement could not be resolved, the Department has incorporated the Federal language proposal into the proposed regulatory text. A summary of the Tribal and Federal views on these areas of disagreement are set forth below. More detail is available in the Committee's report, which is a part of the official record in this rulemaking and is available upon request. The Department solicits comments on these areas of disagreement.

A. Subpart E—Compacts

One issue of disagreement encountered by the Tribal and Federal representatives concerns the minimum contents that must be included in a compact and funding agreement in order to reflect the requirements of title IV as required under 25 U.S.C. 5365(a).

1. Tribal View

25 U.S.C. 5365(a) provides that ''[a]n Indian Tribe and the Secretary shall include in any compact or funding agreement provisions that reflect the requirements of this subchapter,'' *i.e.,* Subchapter IV—Tribal Self-Governance—Department of the Interior. The Tribal and Federal representatives disagree on how the contents of compacts and funding agreements can satisfy this requirement.'' The Tribal position is that this statutory requirement can be satisfied through simplified Tribal assurances included in a compact and/or funding agreement that the Tribe/Consortium will comply with title IV. Such Tribal assurances would reflect

the requirements of title IV in these agreements without burdening parties to negotiate lengthy documents which may add little additional substance beyond quoting statutory provisions in title IV.

The Tribal position is that the proposed language in §§ 1000.510(e) and 1000.515 is excessive and not properly tailored to satisfying the requirement to reflect the requirements of title IV under 25 U.S.C. 5365(a). The identified topics in these regulatory sections correspond with general topics set out in 25 U.S.C. 5365. These topics include, for example, Tribal assurances that it has procedures in place to address conflicts of interest (25 U.S.C. 5365(b)), will apply applicable cost principles under OMB circulars in performing the title IV compact and funding agreement (25 U.S.C. 5365(c)), and will maintain a recordkeeping system and provide the Secretary with reasonable access to the records to permit the Secretary to meet the requirements of 44 U.S.C. 3101 through 3106 (25 U.S.C. 5365(g)).

The Tribal position is that a title IV compact or funding agreement can include language that satisfies 25 U.S.C. 5365(a), which states that the Tribe/Consortium will carry out the compact or funding agreement ''*in accordance with the requirements of Title IV*.''

2. Federal View

The Federal position on the proposed §§ 1000.510(e) and 1000.515 is based on the language of 25 U.S.C. 5365(a) providing that ''[a]n Indian Tribe and the Secretary shall include in any compact or funding agreement provisions that reflect the requirements of this subchapter.'' The Federal committee members read this statutory language to direct that the parties include in a compact or funding agreement each of the provisions reflecting the requirements of Title IV.

The Federal position is that relevant provisions of the PROGRESS Act indicate that particular language or provisions must be included in a funding agreement or a compact. For example, 25 U.S.C. 5366(b)(1) directs that ''[a] compact or funding agreement shall include provisions for the Secretary to reassume a program and associated funding if there is specific finding relating to that program.'' As another example, 25 U.S.C. 5363(e)(2) authorizes the parities to specify an effective date for retrocession. The Federal position is that the best way to fulfill these statutory requirements is to include provisions matching each of the headings set forth in 25 U.S.C. 5365.

B. Subpart F—Funding Agreements for BIA Programs

Similar to subpart E (Compacts), an issue of disagreement encountered by the Tribal and Federal representatives concerns the minimum contents that must be included in a compact and funding agreement in order to reflect the requirements of title IV as required under 25 U.S.C. 5365(a).

1. Tribal View

For the reasons explained in the Tribal view associated with subpart E (Compacts), the Tribal representatives did not agree to the inclusion of the proposed § 1000.610(b) concerning language which ''must be included in either a compact or funding agreement.'' In parallel to the replacement of the proposed § 1000.515, this language should be replaced by a provision that requires either a compact and funding agreement to ''include a general attestation that, in implementing the agreement, the Tribe will comply with all requirements of Title IV.''

There was also disagreement between the Tribal and Federal representatives regarding negotiations about inherent Federal functions. Both Federal and Tribal representatives agree that the identification of a particular function as an inherent Federal function is a pre-award dispute that is appealable to either the IBIA or the appropriate Bureau head/Assistant Secretary (covered in subpart R—Appeals). And both Federal and Tribal representatives agree that that the amount of funding withheld to cover the cost of inherent Federal functions is subject to pre-award negotiations (covered in this subpart). Tribal representatives proposed language in § 1000.695 to create consistency between subpart R (Appeals) and subpart F (Funding Agreements for BIA Programs) by clarifying, in subpart F (Funding Agreements for BIA Programs), that the identification of an inherent Federal function is a topic of negotiation.

2. Federal View

The Federal position on proposed § 1000.610(b), for reasons explained in the Federal narrative associated with subpart E (Compacts), is based on the language of 25 U.S.C. 5365(a) providing that ''[a]n Indian Tribe and the Secretary shall include in any compact or funding agreement provisions that reflect the requirements of this subchapter.'' The Federal Committee members read this statutory language to direct that the parties include in a compact or funding agreement each of the provisions reflecting the requirements of title IV. This position is informed by the Department's experience when encountering a problem in the execution of a funding agreement. In that situation, the primary question that arises involves what the agreed upon terms of a funding agreement provide as to a particular outcome.

C. Subpart G—Funding Agreements for Non-BIA Programs

A disagreement arose surrounding the inclusion of language about which functions may be considered ''inherently Federal'' for purposes of 25 U.S.C. 5363(k) and may therefore not be contracted to Tribes. In addition, a disagreement arose as to whether contract support costs are limited by Congressional appropriations.

1. Tribal View

Tribal representatives proposed to include a single sentence from a Department Solicitor guidance memorandum, ''Inherently Federal Functions under the Tribal Self-Governance Act,'' dated May 17, 1996 (Solicitor Memo), which has been in place for close to 30 years. Those parts of the proposed sentence that are not copied verbatim from the Solicitor Memo are substantively identical to the statement from the memo, according to the Tribal representatives.

The Tribally proposed sentence would state that ''[w]hen determining whether a function is inherently Federal within the meaning of the Act, the more a delegated PSFA relates to Tribal sovereignty over citizens or territory, the more likely it is that the function is not inherently Federal.'' [3]

Tribal representatives initially requested that the proposed rule clarify that the Department will provide all necessary contract support costs, as calculated under section 106(a) of the ISDEAA, for all Self-Governance agreements entered into by non-BIA Agencies. Such a regulatory commitment would create predictability, transparency, and the necessary financial footing for increasing the abysmally low level of non-BIA Self-Governance agreements. The Federal representatives did not agree to such a commitment in this proposed rule.

As a compromise, the Committee proposes to keep the existing regulatory

[3] By comparison, the sentence in the Solicitor Memo reads, ''The more a delegated function relates to tribal sovereignty over members or territory, the more likely it is that the inherently exception of section 403(k) does not apply.'' *See* U.S. Department of the Interior, Office of the Solicitor, Memorandum on Inherently Functions under the Tribal Self-Governance Act (May 17, 1996), at 12.

language requiring that agreements with non-BIA agencies under 25 U.S.C. 5363(c) include funding for allowable indirect costs, while separately addressing direct contract support costs. Tribal representatives proposed language that would make it clear to Tribal and Federal negotiators that the baseline for determining such direct contract support costs should be the same as for any other ISDEAA agreement, as provided for in the statutory text found in section 106(a) of the ISDEAA.

2. Federal View

The Federal position on the proposed § 1000.845(a) is that particular quotations taken out of context from legal guidance issued by the Department's Solicitor to DOI bureaus and offices should not be codified in regulation. A single sentence in isolation fails to capture the complete standard for identifying an inherently Federal function under the legal guidance. Furthermore, if the sentence in isolation became the regulatory standard for an inherently Federal function, that would create an administrative process by which an applicant Tribe asks a bureau or office of the Department to opine on the Tribe's sovereignty, and attendant obligation under the Administrative Procedure Act, could unintentionally create roadblocks or limitations upon the Tribe's sovereignty in a manner that the Department cannot endorse.

Additionally, the Department notes that provision of contract support costs is subject to Congressional appropriations. While individual bureaus and offices may support providing contract support costs, as discussed in the Tribal narrative, the Department is unable to reallocate funds to provide those contract support costs without Congressional authorization.

D. Subpart K—Construction

A number of disagreements arose regarding whether certain responsibilities pursuant to the NEPA and related statutes are ''inherent Federal functions.''

1. Tribal View

25 U.S.C. 5367(b) provides that, ''subject to the agreement of the Secretary,'' a Tribe or Consortium may ''elect to assume some Federal responsibilities under'' NEPA by (a) designating a Tribal official to ''assume the status of a responsible Federal official'' for purposes of NEPA and (b) issuing a limited waiver of sovereign immunity for the purposes of ''enforcing the responsibilities'' of that official. Because making environmental determinations, such as whether to approve NEPA documents, including categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs), is one of the responsibilities of a Federal official under NEPA, and because Tribal officials have been issuing such decisions for years under similar language in Title V, the Tribal representatives proposed several regulatory provisions to clarify the rights and responsibilities of a Tribe or Consortium that elects to assume Federal responsibilities pursuant to 25 U.S.C. 5367(b).

Tribal negotiators proposed regulatory provisions to clarify the rights and responsibilities of a Tribe or Consortium that elects to assume Federal responsibilities pursuant to 25 U.S.C. 5367(b). Tribal negotiators proposed a regulatory provision reflecting the process by which a Tribe/Consortium is recognized as having led, cooperating, or joint lead agency status on a project. Tribal representatives to the Committee argued that the proposed rule should define the term ''categorical exclusion'' for ease of use by Tribal and Federal officials, and because the term is used in proposed § 1000.1385.

2. Federal View

The Federal position is that the Committee must follow the language of the PROGRESS Act, which only allows Tribes to assume under title IV ''*some* Federal responsibilities under the National Environmental Policy Act of 1969,'' 25 U.S.C. 5367(b) (emphasis added). This language) differs from the statutory language allowing Tribes to assume ''*all* Federal responsibilities under the National Environmental Policy Act of 1969,'' 25 U.S.C. 5389(a) (emphasis added), in title V. Moreover, under title IV, the Secretary is prohibited from delegating to a Tribe or Consortium ''duties of the Secretary under [NEPA, the NHPA,] and other related provisions of law that are inherent Federal functions.'' 25 U.S.C. 5367(c). The Committee is duty bound to follow Congress's guidance in developing proposed regulations. The Federal representatives of the Committee read Congress's use of the term *some* to mean something different than when Congress uses the term *all. See, e.g., Ysleta Del Sur Pueblo* v. *Texas,* 596 U.S. 685, 698 (2022) (Supreme Court restating its ''usual presumption that differences in language like this convey differences in meaning.'').

E. Subpart R—Appeals

A disagreement arose about when a Tribe/Consortium may choose to pursue an administrative appeal with the appropriate bureau head/Assistant Secretary as an alternative path to filing an administrative appeal with the IBIA.

1. Tribal View

The Tribal position is that the proposed regulations should empower, and not limit, Tribes/Consortia to have options to decide how to proceed with an administrative appeal. Tribal representatives are aware that Tribes/Consortia have encountered difficulties and delays when pursuing appeals with the IBIA. Although changes to the IBIA itself are outside the scope of this negotiated rulemaking, the Tribal representatives urged that this proposed rule should provide Tribes/Consortia with the greatest flexibility to address the realities of the IBIA appeals process. Further, the Tribal representatives emphasize that the Department and Congress should pursue all available routes to improve the IBIA appeals process to decide appeals in a just, efficient, and time-sensitive manner.

To address the realities of the IBIA system, Tribal negotiators argue that *all* pre-award dispute decisions that fall within § 1000.2345 should be eligible to be decided by a bureau head/Assistant Secretary, in lieu of an appeal to the IBIA, if a Tribe/Consortium so chooses. This position would establish two mutually exclusive paths that a Tribe/Consortium could choose from to pursue *any* pre-award dispute under § 1000.2345: either through (1) the IBIA; or (2) the bureau head/Assistant Secretary. Section 1000.2345 identifies the types of decisions that may be appealed to either a bureau head/Assistant Secretary or the IBIA under certain sections in subpart R (Appeals) and includes decisions such as rejecting a final offer, rejecting a proposed amendment to a compact or funding agreement, determinations that a provision in a retained funding agreement and/or compact are directly contrary to title IV, non-immediate reassumption, and certain construction-related decisions.

2. Federal View

The Federal position on the proposed §§ 1000.2302 and 1000.2351 is that these sections, which provide the appeals process for certain types of disputes under the current regulations—and were not otherwise changed, amended, or even addressed by the PROGRESS Act—provide an avenue for Tribes to appeal their disputes in a

manner that empowers Tribes to pursue potential options beyond those available to Tribes under subpart L (Appeals) of 25 CFR part 900, applicable to disputes under title I, and subpart P (Appeals) of 42 CFR part 137, applicable to disputes under title V (IHS). Under 25 CFR part 900, the only avenue of appeal available to Tribes after efforts at informal dispute resolution have not resolved the dispute is to file a notice of appeal with the IBIA. Likewise, 42 CFR part 137, which follows the appeals procedures set forth in 25 CFR part 900, provides for appeals to be heard only by the IBIA. By contrast, as to certain types of disputes, proposed subpart R (Appeals) provides for appeals to be made to either the IBIA or a bureau head/Assistant Secretary. These types of appeals are for pre-award non-title I eligible PSFA disputes, which encompasses a broad range of issues including, but not limited to, PSFAs transferred under section 403(c) of title IV, decisions declining to provide requested information, allocations of program funds when a dispute arises between a Consortium and a withdrawing Tribe, and inherently Federal functions.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 14094 and E.O. 13563)

Executive Order (E.O.) 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department has developed this proposed rule in a manner consistent with these requirements.

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at *https://www.regulations.gov* by searching for ''RIN 1076–AF62.''

E.O. 12866 Interagency Feedback Received on Proposed Rule

The Department is proposing new regulations to update the manner in which it implements self-governance at the Department. This Notice discusses the rationale for the changes that should have no major impacts on regulations or programs administered by other agencies. Overall, the proposed rule is expected to apply only to those Tribes/Consortia that enter into a self-governance compact with the Department and conclude a funding agreement under that compact.

However, during OIRA's E.O. 12866 review, the Department received comment expressing concerns about how the Department's proposed rule might intersect with another agency's self-governance regulations and program. The Department currently lacks information to describe the manner, if any, in which its self-governance regulations might affect self-governance compacts and funding agreements between Tribes/Consortia and agencies other than the Department. Some priority learning questions, where we seek information, include:

- How or whether the provisions of the proposed rule, especially those terms and processes in common between the Department and self-governance regulations at other agencies could affect any term of any other agency's self-governance procedures?
- How or whether the Department could specify that its proposed rule implementing self-governance at the Department does not bear upon either interpretation of language in another agency's self-governance regulations or authorizing statute, nor language in a compact or funding agreement between a Tribe/Consortia and another agency.
- How or whether the Department could address potential inconsistencies between its proposed rule, based on the Department's authorizing legislation, and similar provisions in other agencies' self-governance regulations, which are based on their respective, different authorizing statutes.

B. Regulatory Flexibility Act

The Department has evaluated the effects of this proposed rule on small entities, such as local governments and businesses. Based on its evaluation, the Department certifies that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the evaluation, the Department anticipates that this action would not have a significant economic impact on small entities. The Department only foresees this proposed rule having an impact on the Federal Government and Indian Tribes, which are not considered to be small entities for purposes of this Act.

C. Congressional Review Act (CRA)

While any determination will not be made until any final rule is published, the Department does not anticipate that this rule, if finalized, would meet the criteria under 5 U.S.C. 804(2), because it would not have an annual effect on the economy of $100 million or more, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector because this proposed rule affects only putative exporters and their related businesses. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. Specifically, this proposed rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all

regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that the NPRM would not impose substantial direct compliance costs on Indian Tribal governments, would not preempt Tribal law, would not have any potentially adverse effects, economic or otherwise, on the viability of Indian Tribes. Rather, this action will reduce the administrative burden of Indian Tribes participating in this program. Therefore, a Tribal summary impact statement is not required.

The Department initiated a negotiated rulemaking process, with both Tribal and Federal representatives, which the Department asserts fulfills its obligations to consult to develop the text of this proposed rule. The results of these ongoing negotiated rulemaking meetings were periodically reported and discussed in other Federal and Tribal fora. The Tribal and Federal representatives reached consensus on the proposed rule text and Preamble, except for the four areas of disagreement discussed above.

The Department anticipates seeking Tribal input through the comment period and until publication of a Final Rule.

I. Paperwork Reduction Act

This proposed rule contains existing information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Self-Governance program is authorized by the Tribal Self-Governance Act of 1994, 25 U.S.C. 5301, Public Law 103–413, as amended. Tribes interested in entering into Self-Governance must submit certain information as required by the Act. In addition, those Tribes and Consortia that have entered into Self-Governance funding agreements will be requested to submit certain information as described in this proposed rule. This information will be used to justify a budget request submission on their behalf and to comport with section 405 of the Act that calls for the Secretary to submit an annual report to the Congress.

The following revision to the existing information collections require approval by OMB.

- *Summary of Proposed Revision:* Projected increase in respondent participation and total number of annual respondents.
- *Title of Collection:* Tribal Self-Governance Program.
- *OMB Control Number:* 1076–0143.
- *Form Number:* Annual Self-Governance Report Form.
- *Type of Review:* Revision of a currently approved collection.
- *Respondents/Affected Public:* Federally recognized Indian Tribes and Tribal Consortia participating in or wishing to enter into Tribal Self-Governance.
- *Total Estimated Number of Annual Respondents:* 115.
- *Total Estimated Number of Annual Responses:* 130.
- *Estimated Completion Time per Response:* Varies from 1 to 400 hours.
- *Total Estimated Number of Annual Burden Hours:* 5,073 hours.
- *Respondent's Obligation:* Required to obtain a benefit.
- *Frequency of Collection:* On occasion or annually.
- *Total Estimated Annual Non-Hour Burden Cost:* $10,600 for cost associated with attending training and hiring consultants to provide services for entering the Self-Governance Program.
- *Annual Costs to Federal Government:* $1,592,490.

As part of our continuing effort to reduce paperwork and respondents' burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Send your written comments and suggestions on this information collection to OIRA listed in **ADDRESSES** by the date indicated in **DATES**. Please also send a copy to *consultation@bia.gov* and reference ''OMB Control Number 1076–0143'' in the subject line of your comments. You may also view the ICR at *https://www.reginfo.gov/public/Forward?SearchTarget=PRA&textfield=1076-0143.*

J. National Environmental Policy Act (NEPA)

Under NEPA, categories of Federal actions that normally do not significantly impact the human environment may be categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. *See* 40 CFR 1501.4. The Department's regulations categorically exclude the promulgation of ''regulations . . . that are of an administrative . . . or procedural nature,'' because the promulgation of such regulations normally does not have a significant effect on the human environment, individually or in the aggregate. *See* 43 CFR 46.210(i). This rule is administrative and procedural in nature, and therefore is within the scope of this categorical exclusion. Further, the Department determined that the rule would not involve any extraordinary circumstances that might require preparation of an environmental assessment or an environmental impact statement. *See* 43 CFR 46.215.

K. Energy Effects (E.O. 13211)

This proposed rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

The Department is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(l)(B)), and 13563 (section l(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find

unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, and so forth.

M. Public Availability of Comments

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.

List of Subjects in 25 CFR Part 1000

Administrative practice and procedure, Indian Tribes, Tribal Consortium.

■ For the reasons set forth in the preamble above, the Department of the Interior, Assistant Secretary—Indian Affairs, proposes to revise 25 CFR part 1000 to read as follows:

PART 1000—ANNUAL FUNDING AGREEMENTS UNDER THE TRIBAL SELF-GOVERNMENT ACT AMENDMENTS TO THE INDIAN SELF-DETERMINATION AND EDUCATION ACT

The authority of this entire part 1000 is as follows:

Authority: 25 U.S.C. 5373

Subpart A—General Provisions

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

Purpose and Definitions

Eligibility

Selection To Participate in Self-Governance

Withdrawal From a Consortium Funding Agreement

Subpart C—Planning and Negotiation Grants for BIA Programs

Subpart D—Financial Assistance for Planning and Negotiation Activities for Non-BIA Bureau Programs

Subpart A—General Provisions

§ 1000.1 What is the authority of this part?

This part is prepared and issued by the Secretary of the Interior with the active participation and representation of Indian Tribes, Tribal organizations and inter-Tribal consortia under the negotiated rulemaking procedures required by section 413 of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended by the PROGRESS for Indian Tribes Act, Public Law 116–180 (25 U.S.C. 5373).

§ 1000.5 What key terms do I need to know?

403(c) Program or Nexus Program means a non-BIA program eligible under 25 U.S.C. 5363(c) and, specifically, a program, function, service, or activity that is of special geographic, historical, or cultural significance to a self-governance Tribe/Consortium. These programs may also be referred to as ''nexus programs.''

Act means title IV of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended by Public Law 103–413, Public Law 104–109, and Public Law 116–180.

BIA means the Bureau of Indian Affairs of the Department or any successor bureau. For purposes of this part, BIA shall include the Office of the Assistant Secretary for Indian Affairs, BIE, and BTFA, or any successor bureau, unless specified otherwise.

BIA Program means any program, service, function, or activity, or portion thereof, that is performed or administered by the Department through the BIA. For purposes of this part, BIA Program shall also include any PSFA performed or administered by the Department through the Office of the Assistant Secretary for Indian Affairs, BIE, or BTFA which are eligible for inclusion in a compact or funding agreement under the Act unless specified otherwise.

BIE means the Bureau of Indian Education of the Department, or any successor bureau.

BIE Program means any program, service, function, or activity, or portion thereof, that is performed or administered by the Department through the BIE and is eligible for inclusion in a compact and funding agreement under the Act.

BTFA means the Bureau of Trust Funds Administration of the Department, or any successor bureau, to which the Department has transferred fiduciary programs, services, functions, and activities from the Office of Special Trustee for American Indians, as it is referenced in 25 U.S.C. 5361, *et seq.,* as amended.

Bureau means a bureau, service, office, agency, and other such subsidiary entity within the Department.

Compact means a self-governance compact entered under 25 U.S.C. 5364.

Consortium means an organization of Indian Tribes that is authorized by those Tribes to participate in self-governance under this part and is responsible for negotiating, executing, and implementing funding agreements and compacts.

Construction management services (CMS) means activities limited to administrative support services, coordination, oversight of engineers and construction activities. CMS services include services that precede project design: all project design and actual construction activities are subject to subpart K of these regulations whether performed by a Tribe subcontractor, or consultant.

Construction program or *construction project* means a Tribal undertaking relating to the administration, planning, environmental determination, design, construction, repair, improvement, or expansion of roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community, health, irrigation, agriculture, conservation, flood control, transportation, or port facilities, or for other Tribal purposes.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a Federal holiday, the period must carry over to the next business day unless otherwise prohibited by law.

Director means the Director of the Office of Self-Governance (OSG).

DOI or *Department* means the Department of the Interior.

Funding agreement means a funding agreement entered into under 25 U.S.C. 5363.

Funding year means either fiscal or calendar year.

Gross mismanagement means a significant violation, shown by a preponderance of the evidence, of a compact, funding agreement, or statutory or regulatory requirement applicable to Federal funds for a PSFA administered by an Indian Tribe under a compact or funding agreement.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe or *Tribe* means any Indian Tribe, band, nation or other organized group or community, including pueblos, rancherias, colonies and any Alaska Native village, or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Indirect costs means costs incurred for a common or joint purpose benefitting more than one program and that are not readily assignable to individual programs.

Indirect cost rates means the rate(s) arrived at through negotiation between an Indian Tribe/Consortium and the appropriate Federal agency.

Inherent Federal function means a Federal function that may not legally be delegated to an Indian Tribe.

Non-BIA Bureau means any bureau within the Department other than the BIA, the BIE, the BTFA, or the Office of the Assistant Secretary for Indian Affairs.

Non-BIA bureaus director/commissioner means the director of Non-BIA bureaus and the commissioner of the Bureau of Reclamation.

Non-BIA Programs means all or a portion of a program, function, service, or activity that is administered by any bureau other than the BIA, the BIE, the BTFA, or the Office of the Assistant Secretary for Indian Affairs within the Department.

Office of Self-Governance (OSG) means the office within the Office of the Assistant Secretary—Indian Affairs responsible for the implementation and development of the Tribal Self-Governance Program.

Program or *PSFA* means any program, service, function, or activity (or portions thereof) within the Department that is included in a funding agreement.

Public Law 93–638 means sections 1 through 9 and title I of the Indian Self-Determination and Education Assistance Act of 1975, as amended.

Reassumption means the Secretary, without consent of the Tribe/Consortium, takes control or operation of the PSFAs and associated funding in a compact or funding agreement, in whole or in part, and assumes the responsibility to provide such PSFAs.

Residual Funds means funding that is necessary for the Department to carry out inherent Federal functions that cannot be delegated to a Tribe/Consortia by law.

Retained Tribal shares means those funds that were available as a Tribal share but under the funding agreement were left with BIA to administer.

Retrocession means the voluntary full or partial return by a Tribe/Consortium to a bureau of a PSFA operated under a funding agreement before the agreement expires.

Secretary means the Secretary of the Interior or his or her designee authorized to act on the behalf of the Secretary as to the matter at hand.

Self-determination contract means a self-determination contract entered into under 25 U.S.C. 5321.

Self-governance means the Tribal Self-Governance Program established under 25 U.S.C. 5362.

Self-governance Tribe/Consortium means a Tribe or Consortium that has been selected to participate in self-governance. May also be referred to as ''participating Tribe/Consortium.''

Subsequent funding agreement means a funding agreement negotiated after a Tribe's/Consortium's initial agreement with a bureau.

Tribal share means the portion of all funds and resources determined for that Tribe/Consortium that supports any program within BIA, the BIE, the BTFA, or the Office of the Assistant Secretary for Indian Affairs and are not required by the Secretary for the performance of an inherent Federal function.

§ 1000.10 What is the purpose and scope of this part?

(a) *Purpose.* This part codifies uniform and consistent rules for the Department implementing title IV of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 25 U.S.C. 5361 *et seq.,* as amended by title II of Public Law 103–413, the Tribal Self-Governance Act of 1994 (108 Stat. 4250, October 25, 1994) and title I of Public Law 116–180, the PROGRESS for Indian Tribes Act (134 Stat. 857, October 21, 2020).

(b) *Scope.* These regulations are binding on the Secretary and on Tribes/Consortia carrying out programs, services, functions, and activities (PSFAs) (or portions thereof) under title IV except as otherwise specifically authorized by a waiver under 25 U.S.C. 5369(b) and this part.

(c) *Information Collection.* The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned control number 1076–0143. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 1000.15 What is the congressional policy statement of this part?

(a) *Congressional findings.* In the Act, the Congress found that:

(1) The Tribal right of self-governance flows from the inherent sovereignty of Indian Tribes and nations;

(2) The United States recognizes a special government-to-government relationship with Indian Tribes,

including the right of the Tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian Tribes;

(3) Although progress had been made, the Federal bureaucracy has discouraged, to some degree, the further compacting of Indian programs or hindered negotiations between the Department and Tribes for renewing self-governance compacts and funding agreements;

(4) Tribal Self-Governance was designed to improve and perpetuate the government-to-government relationship between Indian Tribes and the United States and to strengthen Tribal control over Federal funding and program management; and

(5) Congress further finds that:

(i) Transferring control over funding and decision making to Tribal governments, upon Tribal request, for Federal programs is an effective way to implement the Federal policy of government-to-government relations with Indian Tribes; and

(ii) Transferring control over funding and decision making to Tribal governments, upon request, for Federal programs strengthens the Federal policy of Indian self-determination.

(b) *Congressional declaration of policy.* It is the policy of the Act to permanently establish and implement self-governance:

(1) To enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian Tribes;

(2) To permit each Tribe to choose the extent of its participation in self-governance;

(3) To coexist with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Indian services by designated Federal agencies;

(4) To ensure the continuation of the trust responsibility of the United States to Indian Tribes and Indian individuals;

(5) To permit an orderly transition from Federal domination of programs and services to provide Indian Tribes with meaningful authority to plan, conduct, redesign, and administer PSFAs that meet the needs of the individual Tribal communities; and

(6) To provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.

(c) As reflected in H. Rept. 116–422 and S. Rept. 116–34, it is the policy of the PROGRESS for Indian Tribes Act, Public Law 116–180:

(1) To clarify and streamline the Department's process for approving self-governance compacts and funding agreements;

(2) To create consistency and administrative efficiencies between title IV and title V of Public Law 93–638, as amended; and

(3) To minimize delays to self-governance compacting or funding.

§ 1000.20 What is the Secretarial policy of this part?

In carrying out Tribal self-governance under title IV, it is the policy of the Secretary:

(a) To fully support and implement the foregoing policies to the full extent of the Secretary's authority.

(b) To recognize and respect the unique government-to-government relationship between Tribes, as sovereign governments, and the United States.

(c) To have all bureaus of the Department work to further and protect the trust responsibility of the United States with respect to Tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

(d) To have all bureaus of the Department work cooperatively and pro-actively with Tribes/Consortia on a government-to-government basis within the framework of the Act and any other applicable provision of law, so as to make the ideals of self-determination and self-governance a reality.

(e) To have all bureaus of the Department work to streamline the process for Tribes/Consortia participating in or applying to participate in self-governance to establish administrative efficiencies and consistency with the processes under title IV and title V of Public Law 93–638, as amended.

(f) To have all bureaus of the Department actively share information with Tribes and Tribal Consortia to encourage Tribes and Tribal Consortia to become knowledgeable about the Department's programs and the opportunities to include them in a funding agreement.

(g) To interpret each Federal law and regulation in a manner that facilitates the inclusion of programs in funding agreements and the implementation of funding agreements.

(h) That all bureaus of the Department will negotiate in good faith, liberally construe each applicable Federal law and regulation in a manner that will benefit Tribes and Tribal Consortia participating in self-governance and facilitate the inclusion of programs in each funding agreement authorized, and timely enter into such funding agreements under title IV, whenever possible.

(i) To afford Tribes and Tribal Consortia the maximum flexibility and discretion necessary to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious, and institutional needs. These policies are designed to facilitate and encourage Tribes and Tribal Consortia to participate in the planning, conduct, and administration of those Federal programs, included, or eligible for inclusion in a funding agreement.

(j) To the extent of the Secretary's authority, to maintain active communication with Tribal governments regarding budgetary matters applicable to programs subject to the Act, and that are included in an individual funding agreement.

(k) To implement policies, procedures, and practices at the Department to ensure that the letter, spirit, and goals of the Act are fully and successfully implemented to the maximum extent allowed by law.

(l) To ensure that Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments and any subsequent Executive Orders regarding consultation will apply to the implementation of these regulations.

§ 1000.25 What is the effect on existing Tribal rights?

Nothing in this part shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by Indian Tribes;

(b) Terminating, waiving, modifying, or reducing the trust responsibility of the United States to the Indian Tribe(s) or individual Indians. The Secretary must act in good faith in upholding this trust responsibility;

(c) Requiring an Indian Tribe to participate in self-governance; or

(d) Impeding awards by other Departments and agencies of the United States to Indian Tribes to administer Indian programs under any other applicable law.

§ 1000.30 What is the effect of these regulations on Federal program guidelines, manual, or policy directives?

Unless expressly agreed to by the Tribe/Consortium in a compact or funding agreement, the Tribe/Consortium shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except for the eligibility provisions of 25 U.S.C. 5324(g) and the

regulations under this part to the extent a regulatory provision is not waived by the Secretary.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

Purpose and Definitions

§ 1000.101 What is the purpose of this subpart?

This subpart describes the selection process and eligibility criteria that the Secretary uses to decide that Indian Tribes may participate in Tribal self-governance as authorized by 25 U.S.C. 5362.

§ 1000.105 What is a "signatory"?

A signatory is a Tribe or Consortium that meets the eligibility criteria in §§ 1000.115 and 1000.125 and directly signs the agreements. A signatory may exercise all of the rights and responsibilities outlined in the compact and funding agreement and is legally responsible for all financial and administrative decisions made by the signatory.

§ 1000.110 What is a "nonsignatory Tribe"?

(a) A nonsignatory Tribe is a Tribe that either:

(1) Does not meet the eligibility criteria in §§ 1000.115 and 1000.125 and, by resolution of its governing body, authorizes a Consortium to participate in self-governance on its behalf.

(2) Meets the eligibility criteria in §§ 1000.115 and 1000.125 but chooses to be a member of a Consortium and have a representative of the Consortium sign the compact and funding agreement on its behalf.

(b) A non-signatory Tribe under paragraph (a)(1) of this section:

(1) May not sign the compact and funding agreement. A representative of the Consortium must sign both documents on behalf of the Tribe.

(2) May only become a ''signatory Tribe'' if it independently meets the eligibility criteria in §§ 1000.115 and 1000.125.

Eligibility

§ 1000.115 Who may participate in Tribal self-governance?

There are two types of entities who may participate in Tribal self-governance:

(a) Indian Tribes; and

(b) Consortia of Indian Tribes.

§ 1000.120 How many additional Tribes/Consortia may participate in self-governance per year?

(a) The Secretary, acting through the Director of the OSG, may select not more than 50 new Indian Tribes per year from those Tribes eligible under 25 U.S.C. 5362(c) to participate in self-governance. A Consortium of Indian Tribes counts as one Tribe for purposes of calculating the 50 additional Tribes per year.

(b) The limitation of not more than 50 new Tribes per year does not preclude a signatory Tribe from negotiating a new or amended compact or funding agreement. Such new or amended compacts or funding agreements do not count against the limitation of not more than 50 new Tribes per year.

§ 1000.125 What must a Tribe/Consortium submit to be selected to participate in Self-Governance?

The Tribe/Consortium must submit to OSG documentation that demonstrates the following:

(a) Successful completion of a planning phase as described in § 1000.140. A Consortium's planning activities satisfy this requirement for all its member Tribes for the purpose of the Consortium meeting this requirement.

(b) A request for participation in self-governance by a Tribal resolution and/or a final official action by the Tribal governing body. For a Consortium, the governing body of each Tribe must authorize its participation by a Tribal resolution and/or a final official action by the Tribal governing body that specifies the scope of the Consortium's authority to act on behalf of the Tribe.

(c) For a Tribe/Consortium required to perform an annual audit under the Single Audit Act and Subpart F of 2 CFR part 200, financial stability and financial management capability as evidenced by the Tribe (or participating Tribes in a Consortium) having no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency for the three fiscal years preceding the date on which the Tribe/Consortium requests participation, provided that documentation demonstrating the correction of any significant and material audit exceptions may include, but is not limited to, Agency Management Decision Letters issued in accordance with 2 CFR 200.521, Summary Schedule of Prior Audit Findings included in subsequent audit reports in accordance with 2 CFR 200.511, or any documentation provided by the Tribe/Consortium.

§ 1000.130 What additional information may be submitted to the Secretary to facilitate negotiations?

At the option of the Tribe/Consortium, a Tribe/Consortium may identify BIA and non-BIA programs that the Tribe/Consortium may wish to subsequently negotiate for inclusion in a funding agreement. The inclusion of PSFAs in a funding agreement is not limited by the provision of this additional information.

§ 1000.135 May a Consortium member Tribe withdraw from the Consortium and be selected to participate in Self-Governance?

In accordance with the expressed terms of the compact or written agreement of the Consortium, a Consortium member Tribe (either a signatory or nonsignatory Tribe) may fully or partially withdraw from a participating Consortium its share of any program included in a compact or funding agreement to directly negotiate a compact and funding agreement. The withdrawing Tribe must do the following:

(a) Independently meet all of the eligibility criteria in §§ 1000.115 through 1000.140. If a Consortium's planning activities specifically consider self-governance activities for a member Tribe, that planning activity may be used to satisfy the planning requirements for the member Tribe if it applies for self-governance status on its own.

(b) Submit a notice of withdrawal to OSG and the Consortium as evidenced by a resolution of the Tribal governing body.

§ 1000.140 What is required during the "planning phase"?

The planning phase must be conducted to the satisfaction of the Tribe/Consortium and must include:

(a) Legal and budgetary research; and

(b) Internal Tribal government, planning, training, and organizational preparation related to the operation of PSFAs contemplated by the Tribe/Consortium.

§ 1000.145 When does a Tribe/Consortium have an uncorrected "significant and material audit exception"?

A Tribe/Consortium has an uncorrected significant and material audit exceptions if any of the audits that it submitted under § 1000.125(c) identifies:

(a) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs which the Tribe/Consortium has not corrected.

(b) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program which the Tribe/Consortium has not corrected.

(c) A single finding of known questioned costs subsequently disallowed by a contracting officer or awarding official that exceeds $25,000 (or such higher amount as may be established in 2 CFR 200.516).

§ 1000.150 What are the consequences of having an uncorrected significant and material audit exception?

If a Tribe/Consortium has an uncorrected significant and material audit exception, the Tribe/Consortium is ineligible to be selected to participate in self-governance until the Tribe/Consortium meets the documentation requirements in § 1000.125.

§ 1000.155 Is the Secretary required to provide technical assistance to improve a Tribe's/Consortium's internal controls?

Yes. In considering proposals by a Tribe/Consortium for participation in Self-Governance, if the Secretary determines that the Tribe/Consortium lacks adequate internal controls necessary to manage PSFAs proposed for inclusion in a compact or funding agreement under this part, the Secretary shall, as soon as practicable, provide the necessary technical assistance to assist the Tribe/Consortium in developing adequate internal controls in accordance with 25 U.S.C. 5324(q)(1).

Selection To Participate in Self-Governance

§ 1000.160 How is a Tribe/Consortium selected to participate in Self-Governance?

(a) For a Tribe not presently participating in Self Governance to be selected, the Tribe/Consortium may submit a request to the Director at any time, but no later than 180 days before the proposed effective date of the funding agreement (*e.g.,* October 1, January 1, or such other date as the parties agree). The request must contain the documentation required in § 1000.125.

(b) OSG shall select a Tribe/Consortium to participate in self-governance upon a determination that the Tribe/Consortium has provided the required documentation in § 1000.125, consistent with 25 U.S.C. 5362(b)(1)(A).

(c) OSG shall notify the Tribe/Consortium no later than 45-days after receipt of the Tribe's/Consortium's request that the Tribe/Consortium has been selected to participate in self-governance or does not have a complete request under § 1000.185.

§ 1000.165 When does OSG accept requests to participate in Self-Governance?

OSG accepts requests at any time. A Tribe/Consortium may request a meeting or other informal discussion with the OSG before submitting its request to participate.

§ 1000.170 Are there any time frames to negotiate an initial compact or funding agreement for a Tribe not presently participating in self-governance?

Yes.

(a) Once selected to participate in self-governance, the parties should begin negotiations at least 180 days before the proposed effective date of the initial funding agreement and compact (*e.g.,* October 1, January 1, or such other date as the parties agree in the initial funding agreement or compact).

(b) A Tribe/Consortium may be selected to participate during one year but negotiate a compact and funding agreement in a subsequent year. In this case, the Tribe/Consortium must, before the applicable period established in § 1000.160, submit to OSG documentation demonstrating continued eligibility under 25 U.S.C. 5362(c).

§ 1000.175 How does a Tribe/Consortium withdraw its request to participate in Self-Governance?

A Tribe/Consortium may withdraw its request to participate in Self Governance by submitting a Tribal resolution or official action by the Tribal governing body to the Director of OSG.

§ 1000.180 What if more than 50 Tribes/Consortium apply to participate in Self-Governance?

The first 50 Tribes/Consortium who apply and are determined to be eligible under § 1000.160 shall have the option to begin to participate in self-governance. Any Tribe/Consortium denied participation due to the limitation in number of Tribes/Consortium is entitled to participate in the next fiscal year, provided the Tribe/Consortium remains eligible under 25 U.S.C. 5362(c).

§ 1000.185 What happens if a request is not complete?

If OSG determines that a Tribe's/Consortium's request is not complete, OSG will notify the Tribe/Consortium that the request is not complete under § 1000.125 by electronic mail and by letter, certified mail, return receipt requested no later than 45-days after receipt of the Tribe's/Consortium's request. The email and letter will explain what the Tribe/Consortium must do to complete the request.

§ 1000.190 What happens if a Tribe/Consortium is selected to participate but does not execute a compact and a funding agreement?

(a) The Tribe/Consortium remains eligible to negotiate a compact and funding agreement at any time unless:

(1) It does not satisfy the eligibility requirements under 25 U.S.C. 5362(c); or

(2) Submits a Tribal resolution or official action by the Tribal governing body to the Director, OSG requesting to withdraw its request to participate in Self Governance.

(b) Whether or not a Tribe/Consortium executes an agreement has no effect on the selection of up to 50 new Tribes/Consortia in a subsequent year.

§ 1000.195 May a Tribe/Consortium be selected to negotiate a funding agreement under section 403(b)(2) (25 U.S.C. 5363(b)(2)) without having or negotiating a funding agreement under 25 U.S.C. 5363(b)(1)?

Yes, a Tribe/Consortium may be selected to negotiate a funding agreement under 25 U.S.C. 5363(b)(2) without having or negotiating a funding agreement under 25 U.S.C. 5363(b)(1).

§ 1000.200 May a Tribe/Consortium be selected to negotiate a funding agreement under section 403(c) (25 U.S.C. 5363(c)) without negotiating a funding agreement under 25 U.S.C. 5363(b)(1) and/or section 403(b)(2) (25 U.S.C. 5363(b)(2))?

No, 25 U.S.C. 5363(c) of the Act states that any programs of special geographic, cultural, or historical significance to the Tribe/Consortium must be included in funding agreements negotiated under 25 U.S.C. 5363(a) and/or 25 U.S.C. 5363(b). A Tribe may be selected to negotiate a funding agreement under 25 U.S.C. 5363(c) at the same time that it negotiates a funding agreement under 25 U.S.C. 5363(b)(1) and/or 25 U.S.C. 5363(b)(2).

Withdrawal From a Consortium Funding Agreement

§ 1000.205 What happens when a Tribe wishes to withdraw from a Consortium funding agreement?

(a) A Tribe wishing to withdraw from all or a part of a Consortium's funding agreement must notify the parties to the compact and funding agreement. The notice must:

(1) Be in the form of a Tribal resolution or other official action by the Tribal governing body; and

(2) Be received no later than 180 days before the effective date of the next Consortium funding agreement, unless the parties agree to another date.

(b) The resolution referred to in paragraph (a) of this section must

indicate whether the Tribe wishes the withdrawn programs to be administered under a title IV funding agreement, title I contract, or directly by the bureau.

(c) The effective date of the withdrawal will be the date specified in the Tribal resolution and mutually agreed upon by the parties that signed the compact and funding agreement. In the absence of a specific time set forth in the resolution, such withdrawal becomes effective on:

(1) The earlier of one year after the date of submission of the request, or the date on which the funding agreement expires; or

(2) Such date as may be mutually agreed upon by the withdrawing Tribe and the parties that signed the compact and funding agreement.

§ 1000.210 How are funds redistributed when a withdrawing Tribe fully or partially withdraws from a compact and funding agreement and enters a new contract or compact?

When a Tribe eligible to enter into a contract under title I or a compact or funding agreement under title IV fully or partially withdraws from a participating Consortium, and has proposed to enter into a contract or compact and funding agreement covering the withdrawn funds:

(a) The withdrawing Tribe is entitled to its Tribal share of funds supporting those programs that the Tribe will be carrying out under its own contract or compact and funding agreement (calculated on the same basis or methodology upon which the funds were included in the Consortium's funding agreement); and

(b) The funds referred to in paragraph (a) of this section must be transferred from the Consortium's funding agreement, on the condition that the provisions of 25 U.S.C. 5321 and 5324(i), as appropriate, apply to the withdrawing Tribe.

§ 1000.215 If the withdrawing Tribe elects to operate a program carried out under a compact and funding agreement under title IV through a contract under title I, is the resulting contract considered a mature contract under 25 U.S.C. 5304(h)?

If a Tribe withdrawing from a Consortium's funding agreement elects to operate a program carried out under a compact and funding agreement under title IV through a contract under title I, at the option of the Tribe, the resulting contract is considered a mature contract as long as the Tribe meets the requirements set forth in 25 U.S.C. 5304(h).

§ 1000.220 How are funds distributed when a withdrawing Tribe fully or partially withdraws from a Consortium's compact and funding agreement and the withdrawing Tribe does not enter a new contract or compact?

All funds not obligated by the Consortium associated with the withdrawing Tribe's returned Tribal share of funds, less close out costs, shall be returned by the Consortium to DOI for operation of the programs included in the withdrawal.

§ 1000.225 What amount of funding is to be removed from the Consortium's funding agreement for the withdrawing Tribe?

When a Tribe withdraws from a Consortium, the Consortium's funding agreement must be reduced by the portion of funds attributable to the withdrawing Tribe. The Consortium must reduce the funding agreement on the same basis or methodology upon which the funds were included in the Consortium's funding agreement.

(a) If there is not a clear identifiable methodology upon which to base the reduction for a particular program, the parties to the compact and funding agreement must negotiate an appropriate amount on a case-by-case basis.

(b) If a Tribe withdraws in the middle of a funding year, the Consortium agreement must be amended to reflect:

(1) A reduction based on the amount of funds passed directly to the Tribe, or already spent or obligated by the Consortium on behalf of the Tribe; and

(2) That the Consortium is no longer providing those programs associated with the withdrawn funds.

(c) Unexpended funds from a previous fiscal year may be factored into the amount by which the Consortium agreement is reduced if:

(1) The parties to the compact and funding agreement and the withdrawing Tribe agree it is appropriate; and

(2) The funds are clearly identifiable.

§ 1000.230 What happens if there is a dispute between the Consortium and the withdrawing Tribe?

(a) The withdrawing Tribe and the parties to the compact and funding agreement must reach an agreement on the amount of funding and other issues associated with the program(s) involved.

(b) If agreement is not reached:

(1) For BIA Programs, the Director of OSG must make a decision on the funding or other issues involved within 45-days of the Tribe's or Consortium's written submittal of the dispute to the Director of OSG with a copy to the other party.

(2) For non-BIA Programs, the bureau head will make a decision on the funding or other issues involved.

(c) A copy of the decision made under paragraph (b) of this section must be distributed in accordance with the following table:

If the program is administered through . . .	then a copy of the decision must be sent to . . .
(1) The BIA	The BIA Regional Director, the BIA Director, the withdrawing Tribe, and the Consortium.
(2) The BIE	The BIE Associate Deputy Director, the BIE Director, the withdrawing Tribe, and the Consortium.
(3) The BTFA	The BTFA Director, the withdrawing Tribe, and the Consortium.
(4) The Office of the Assistant Secretary—Indian Affairs	The Assistant Secretary for Indian Affairs, the withdrawing Tribe, and the Consortium.

(d) Any decision made under paragraph (b) of this section is appealable under subpart R of this part.

§ 1000.235 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Under § 1000.205, a Tribe may withdraw from a Consortium and request that the Secretary award the Tribe its portion of a construction project's funds. The Secretary may decide not to award these funds if the Secretary determines that the award of the withdrawing Tribe's portion of funds would affect the ability of the remaining members of the Consortium to complete a severable or non-severable phase of the project within available funding.

(a) An example of a non-severable phase of a project would be the construction of a single building to serve all members of a Consortium.

(b) An example of a severable phase of a project would be the funding of a road in one village where the Consortium would be able to complete the roads in other villages that were part of the project approved initially in the funding agreement.

(c) The Secretary's decision under this section may be appealed under subpart R of this part.

Subpart C—Planning and Negotiation Grants for BIA Programs

§ 1000.301 What is the purpose of this subpart?

This subpart describes how a Tribe/Consortium seeking to begin or expand its participation in self-governance may request grants to assist with its required planning phase and to negotiate a compact and funding agreement.

§ 1000.305 Are there grants available to assist Tribes/Consortia to meet the requirements to participate in self-governance?

Yes, any Tribe/Consortium may apply, as provided in § 1000.315, for a grant to assist it to:

(a) Plan to participate in self-governance; and

(b) Negotiate the terms of the compact and funding agreement between the Tribe/Consortium and the Secretary.

§ 1000.310 What is required to request planning and negotiation grants?

A Tribe/Consortium seeking a planning or negotiation grant must submit the following:

(a) A resolution or other final action by the Tribe's/Consortium's governing body requesting to begin or expand its participation in self-governance and to receive a grant; and

(b) For a Tribe/Consortium required to perform an annual audit under the Single Audit Act and subpart F of 2 CFR part 200, evidence showing that the Tribe/Consortium has no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency for the three fiscal years preceding its current request to participate in self-governance.

§ 1000.315 Are planning and negotiation grants available?

Subject to the availability of funds, the Department will annually publish a notice of the number of planning and negotiation grants available, an explanation of the application process for such grants, and the criteria for award. Questions may be directed to the OSG.

§ 1000.320 Must a Tribe/Consortium receive a planning or negotiation grant to be eligible to participate in self-governance?

No, a Tribe/Consortium may use other resources to meet the planning requirement and to negotiate. The award of a planning grant or a negotiation grant is not required in order to meet the planning phase requirement of the Act or to negotiate a compact or funding agreement.

§ 1000.325 What happens if there are insufficient funds to award all of the requests for planning and negotiation grants in any given year?

The Secretary must give funding priority to approved requests for negotiation grants if there are insufficient funds to award all the approved requests for planning and negotiation grants in any given year.

§ 1000.330 May a Tribe/Consortium that has received a planning grant also receive a negotiation grant?

Yes. A planning grant and a negotiation grant may be awarded to the same Tribe/Consortium in the same or separate years.

§ 1000.335 What are the Secretary's responsibilities upon a decision not to award a planning or negotiation grant?

The Secretary must communicate in writing the reasons for declining to award a planning or negotiation grant, and offer the Tribe/Consortium any technical assistance that might make an award possible.

§ 1000.340 May a Tribe/Consortium administratively appeal the Secretary's decision to not award a grant under this subpart?

No. The Secretary's decision to not award a grant under this subpart is final for the Department.

Subpart D—Financial Assistance for Planning and Negotiation Activities for Non-BIA Bureau Programs

§ 1000.401 What is the purpose of this subpart?

This subpart describes additional requirements and criteria applicable to receiving financial assistance for planning and negotiating activities for a non-BIA program.

§ 1000.405 What funds are available to Tribes/Consortium for planning and negotiating activities with non-BIA bureaus?

(a) Tribes/Consortium may contact a non-BIA bureau to determine if funds may be available for the purpose of planning and negotiating activities with non-BIA bureaus under this subpart, including grants awarded pursuant to 25 U.S.C. 5362(e).

(b) Tribes/Consortium may also request information identified in § 1000.1025(b)(2).

§ 1000.410 What kinds of planning and negotiation activities for non-BIA programs does financial assistance from non-BIA bureaus support?

Financial assistance received by a Tribe/Consortium from non-BIA bureaus for planning and negotiation activities for non-BIA programs may support activities such as, but not limited to, the following:

(a) Information gathering and analysis;

(b) Planning activities, that may include notification and consultation with the appropriate non-BIA bureau and identification and/or analysis of activities, resources, and capabilities that may be needed for the Tribe/Consortium to assume non-BIA programs; and

(c) Negotiation activities.

§ 1000.415 Who can apply to a non-BIA bureau for financial assistance to plan and negotiate non-BIA programs?

A Tribe/Consortium may apply for financial assistance to plan and negotiate non-BIA programs if the Tribe/Consortium meets the requirements of 25 U.S.C. 5362(e) and;

(a) Applied to participate in self-governance; or

(b) Been selected to participate in self-governance; or

(c) Has negotiated and entered into an existing funding agreement.

§ 1000.420 Under what circumstances may financial assistance for planning and negotiation activities with non-BIA bureaus be awarded to Tribes/Consortia?

At the discretion of the non-BIA bureau's director/commissioner, financial assistance to plan and negotiate non-BIA programs may be awarded when requested by the Tribe/Consortium. A Tribe/Consortium may submit only one application per year for financial assistance under this section.

§ 1000.425 How does the Tribe/Consortium know when and how to apply for financial assistance for planning and negotiation activities for a non-BIA program?

Subject to the availability of funds, the Secretary will annually publish a notice in the **Federal Register** identifying the number of planning and negotiation grants available from non-BIA bureaus that includes an explanation for each non-BIA bureau describing the application process and

criteria for award. The notice will identify a point-of-contact for each non-BIA bureau where questions about the grants can be directed. Notices for planning and negotiation grants for BIA programs are covered in § 1000.315.

§ 1000.430 What must be included in the application for financial assistance for planning and negotiation activities for a non-BIA program?

The application for financial assistance for planning and negotiation activities for a non-BIA program must include:

(a) Written notification by the governing body or its authorized representative of the Tribe's/Consortium's intent to engage in planning/negotiation activities like those described in § 1000.410;

(b) Written description of the planning and/or negotiation activities that the Tribe/Consortium intends to undertake, including, if appropriate, documentation of the relationship between the proposed activities and the Tribe/Consortium;

(c) The proposed timeline for completion of the planning and/or negotiation activities to be undertaken; and

(d) The amount requested.

§ 1000.435 How will the non-BIA bureau director/commissioner award financial assistance for planning and negotiation activities for a non-BIA program?

The non-BIA bureau director/commissioner must review all applications received by the date specified in the announcement to determine whether or not the applications include the required elements outlined in the announcement. The non-BIA bureau must rank the complete applications submitted by the deadline using the criteria in the notice of funding availability.

§ 1000.440 May non-BIA bureaus provide technical assistance to a Tribe/Consortium in drafting its application?

Yes, upon request from the Tribe/Consortium and subject to the availability of resources, a non-BIA bureau may provide technical assistance to the Tribe/Consortium in the drafting of its application.

§ 1000.445 What are the non-BIA bureau director's/commissioner's responsibilities upon a decision to decline financial assistance?

The non-BIA bureau director/commissioner must communicate in writing the reasons for declining to award financial assistance and offer the Tribe/Consortium technical assistance that might make an award successful through a future application.

§ 1000.450 Can an applicant administratively appeal a decision not to award financial assistance?

No, all decisions made by the non-BIA bureau director/commissioner to award or not to award financial assistance under this subpart are final for the Department.

§ 1000.455 May a Tribe/Consortium reapply through a future planning and negotiation application if it has been previously denied?

Yes, a Tribe/Consortium may reapply through a future planning and negotiation application.

§ 1000.460 Will the non-BIA bureau notify Tribes/Consortium of the results of the selection process?

Yes, the non-BIA bureau will notify all applicant Tribes/Consortium in writing as soon as possible after completing the selection process.

Subpart E—Compacts

§ 1000.501 What is a self-governance compact?

A self-governance compact is a legally binding and mutually enforceable written agreement that affirms the government-to-government relationship between a self-governance Tribe and the United States consistent with the trust responsibility of the Federal Government with respect to Indian Tribes that exists under treaties, Executive orders, court decisions, and other laws. The compact differs from a funding agreement in that parts of the compact apply to all bureaus within the Department rather than a single bureau.

§ 1000.505 Which DOI office negotiates self-governance compacts?

The DOI OSG negotiates self-governance compacts.

§ 1000.510 What is included in a self-governance compact?

A compact shall include general terms setting forth the government-to-government relationship consistent with the Federal Government's trust responsibility with respect to Indian Tribes that exists under treaties, Executive orders, court decisions, and other laws and such other terms as the parties intend to control during the term of the compact.

Each self-governance compact must:

(a) Specify and affirm the general terms of the government-to-government relationship between the Tribe and the Secretary;

(b) State the general terms and conditions of the compact;

(c) Identify the effective date of the compact;

(d) Identify the duration of the compact; and

(e) Include provisions that reflect the requirements of the Act in accordance with § 1000.515.

§ 1000.515 What provisions must be included in either a compact or funding agreement?

Subject to 25 U.S.C. 5365, the following must be included in either a compact or funding agreement. The Tribe/Consortium may include the following in either a compact or funding agreement:

(a) Conflicts of interest;

(b) Applicable cost principles and application of the Single Audit Act;

(c) Limitations on remedies relating to cost disallowances;

(d) For non-construction programs, authorization for the Tribe/Consortium to redesign or consolidate eligible programs and to reallocate funds for such programs;

(e) Reassumption;

(f) Retrocession; and

(g) Recordkeeping.

§ 1000.520 Is a compact required to participate in self-governance?

Yes, a Tribe/Consortium must have a compact in order to participate in self-governance.

§ 1000.525 Can a Tribe/Consortium negotiate other terms and conditions?

Yes, the Secretary and a self-governance Tribe/Consortium may negotiate additional terms relating to the government-to-government relationship between the Tribe(s) and the United States consistent with the trust responsibility of the Federal Government with respect to Indian Tribes that exists under treaties, Executive orders, court decisions, and other laws. A Tribe/Consortium and the Secretary may agree to include any provision from title I of the Act, as amended, in a compact provided that the inclusion of any such provision shall be subject to, and shall not conflict with, section 101(a) of the PROGRESS for Indian Tribes Act, Public Law 116–180 (25 U.S.C. 5361 note).

§ 1000.530 What is the duration of a compact?

Upon approval and execution of a compact, the compact remains in effect for so long as authorized by Federal law or until terminated by mutual written agreement or retrocession or reassumption of all programs.

§ 1000.535 May a compact be amended?

A compact may be amended at any time subject to the applicable negotiation procedures contained in this

part, or by written agreement of the parties.

§ 1000.540 Can a Tribe/Consortium have a funding agreement without having negotiated a compact?

No, a compact is a separate document from a funding agreement, and the compact may be negotiated prior to or at the same time as a funding agreement.

§ 1000.545 May a participating Tribe/Consortium retain its existing compact which was executed prior to the enactment of Public Law 116–180?

Yes, a participating Tribe/Consortium with a negotiated compact executed prior to October 21, 2020, the enactment of Public Law 116–180, shall have the option at any time after that date to:

(a) Retain its existing compact, in whole or in part, to the extent that the provisions of the compact are not directly contrary to any express provision of the Act, as amended, or

(b) Negotiate a new compact in accordance with the Act.

§ 1000.550 What happens if the Tribe/Consortium and Secretary fail to reach an agreement on a compact?

If the Secretary and the Tribe/Consortium have negotiated and are unable to reach agreement, in whole or in part, on the terms of a compact then the Tribe/Consortium may submit a final offer in accordance with subpart I of this part.

Subpart F—Funding Agreements for BIA Programs

§ 1000.601 What is the purpose of this subpart?

This subpart describes the components of funding agreements for BIA programs.

§ 1000.605 What is a funding agreement?

Funding agreements are legally binding and mutually enforceable written agreements negotiated and entered into between a self-governance Tribe/Consortium and the Secretary.

Contents and Scope of Funding Agreements

§ 1000.610 What must be included in a funding agreement?

(a) Each funding agreement must:

(1) Specify the PSFAs that the Tribe/Consortium is authorized to plan, conduct, consolidate, and administer and the responsibilities of the Secretary as outlined in § 1000.650;

(2) Provide for the Secretary to monitor the performance of trust functions administered by the Tribe/Consortium through the annual trust evaluation as specified in subpart O of this part;

(3) Provide for annual or semi-annual installments of advance payment(s), at the option of the Tribe/Consortium;

(4) Provide for the incorporation of required provisions of title I of Public Law 93–638, as amended, pursuant to section 201(d) of the PROGRESS for Indian Tribes Act, and for the incorporation of other provisions of title I of Public Law 93–638, as amended, at the option of the Tribe/Consortium;

(5) Provide for a stable base budget as outlined in §§ 1000.745 through 1000.760, at the option of the Tribe/Consortium;

(6) Prohibit the Secretary from waiving, modifying, or diminishing the trust responsibility of the United States;

(7) Specify the funding agreement's effective date;

(8) Prohibit the Tribe/Consortium from contracting with the Secretary for duplicative funds and/or PSFAs under title I;

(9) Provide that the Tribe/Consortium shall be eligible for new programs and new funding on the same basis as other Indian Tribes; and shall be responsible for the administration of programs in accordance with the compact or funding agreement;

(10) Provide the funding amount(s); and

(11) Include as attachments and incorporate by reference additional documents agreed upon by the parties.

(b) Subject to 25 U.S.C. 5365, the following must be included in either a compact or funding agreement. The Tribe/Consortium may include the following in either a compact or funding agreement:

(1) Conflicts of Interest;

(2) Applicable Cost Principles and application of the Single Audit Act;

(3) Limitations on remedies relating to cost disallowances;

(4) For non-construction programs, authorization for the Tribe/Consortium to redesign or consolidate programs and to reallocate funds for such programs;

(5) Reassumption;

(6) Retrocession; and

(7) Recordkeeping.

§ 1000.615 Can additional provisions be included in a funding agreement?

Yes, any provision that the parties mutually agreed upon may be included in a funding agreement.

§ 1000.620 Does a Tribe/Consortium have the right to include provisions of title I of Public Law 93–638 in a funding agreement?

Yes, a Tribe/Consortium has the right to include any provision of title I of Public Law 93–638, as amended, in a funding agreement.

§ 1000.625 What is the term of a funding agreement?

A funding agreement shall have the term mutually agreed to by the parties. Absent notification from a Tribe/Consortium that it is withdrawing or retroceding the operation of one or more programs identified in a funding agreement or by the nature of any noncontinuing PSFA contained in a funding agreement, the funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.

§ 1000.630 Can a Tribe/Consortium negotiate a funding agreement with a term that exceeds one year?

Yes, at the option of the Tribe/Consortium, and subject to the availability of Congressional appropriations, a Tribe/Consortium may negotiate a funding agreement with a term that exceeds one year under 25 U.S.C. 5363(p)(4).

§ 1000.635 Does a funding agreement remain in effect after the end of its term?

Yes, the provisions of a funding agreement, including all recurring increases received and continuing eligibility for other increases, remain in full force and effect until a subsequent funding agreement is executed, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671 through 2680. Upon execution of a subsequent funding agreement, the provisions of such a funding agreement are retroactive to the term of the preceding funding agreement for purposes of calculating the amount of funding to which the Tribe/Consortium is entitled.

§ 1000.640 May a participating Tribe/Consortium retain its existing funding agreement which was executed prior to the enactment of Public Law 116–180?

Yes, a participating Tribe/Consortium with a funding agreement executed prior to October 21, 2020, the enactment of Public Law 116–180, shall have the option at any time after that date to:

(a) Retain its existing funding agreement, in whole or in part, to the extent that the funding agreement is not contrary to the Act, as amended by Public Law 116–180; or

(b) Negotiate a new funding agreement.

Determining What Programs May Be Included in a Funding Agreement

§ 1000.645 What PSFAs may be included in a funding agreement?

A Tribe/Consortium may include in its funding agreement PSFAs administered by the Secretary for the

benefit of Indians because of their status as Indian, including, but not limited to those provided through the BIA, the BIE, the BTFA, the Office of the Assistant Secretary for Indian Affairs, and the Appraisal and Valuation Services Office, without regard to the agency or office of that Bureau or Office, including any PSFA identified in 25 U.S.C. 5363(b)(1).

§ 1000.650 How does the funding agreement specify the services provided, functions performed, and responsibilities assumed by the Tribe/Consortium and those retained by the Secretary?

(a) The funding agreement must specify in writing the services, functions, and responsibilities to be assumed by the Tribe/Consortium and the functions, services, and responsibilities to be retained by the Secretary.

(b) Any division of responsibilities between the Tribe/Consortium and BIA must be clearly stated in writing as part of the funding agreement. Similarly, when there is a relationship between the program and BIA's inherent Federal functions, the relationship must be explained in the funding agreement.

§ 1000.655 May a Tribe/Consortium redesign or consolidate the programs that are included in a funding agreement and reallocate funds for such programs?

Except where a statute contains specific limitations on the use of funds, a Tribe/Consortium may redesign or consolidate programs included in a funding agreement and reallocate funds for such programs in any manner which it deems to be in the best interest of the Indian community being served, so long as the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law; provided however, that a reduction in funds available for a program or service shall not be considered a denial of eligibility for services. However, redesign of construction project(s) included in a funding agreement must be done in accordance with subpart K of this part.

§ 1000.660 Do Tribes/Consortium need Secretarial approval to redesign BIA programs that the Tribe/Consortium administers under a funding agreement?

No, the Secretary does not have to approve a redesign of a program under the funding agreement, except when the redesign involves:

(a) Programs described in 25 U.S.C. 5363(b)(2) or (c); or

(b) A request to waive a regulation.

§ 1000.665 Can the terms and conditions in a funding agreement be amended during the year it is in effect?

Yes, terms and conditions in a funding agreement may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

Determining Funding Agreement Amounts

§ 1000.670 What funds must be transferred to a Tribe/Consortium under a funding agreement?

(a) Subject to the terms of a funding agreement, the Secretary must transfer to a Tribe/Consortium all funds provided for in the funding agreement, pursuant to 25 U.S.C. 5368. The Secretary shall provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolution.

(b) At the option of the Tribe/Consortium, the Secretary must provide the following program funds to the Tribe/Consortium through a funding agreement:

(1) An amount equal to the amount that the Tribe/Consortium would have been eligible to receive under contracts and grants for direct programs and contract support under title I of Public Law 93–638, as amended;

(2) Any funds that are specifically or functionally related to providing services and benefits to the Tribe/Consortium or its members by the Secretary without regard to the organizational level within BIA where such functions are carried out; and

(3) Any funds otherwise available to Indian Tribes or Indians for which appropriations are made to other Federal agencies and transferred to the Department as directed by law, an Interagency Agreement, or other means.

(c) Examples of the funds referred to in paragraphs (b)(1) and (b)(2) of this section are:

(1) A Tribe's/Consortium's Public Law 93–638 contract amounts;

(2) Negotiated amounts of agency, regional and central office funds, including previously undistributed funds or new programs on the same basis as they are made available to other Tribes;

(3) Other recurring funding;

(4) Non-recurring funding;

(5) Special projects, if applicable;

(6) Construction;

(7) Wildland firefighting accounts;

(8) Competitive grants; and

(9) Congressional earmarked funding.

(d) Examples of the funds referred to in paragraph (b)(3) of this section are:

(1) Federal Highway Administration funds;

(2) Federal Transit Administration funds; and

(3) Funding pursuant to an approved plan under Public Law 102–477, as amended.

§ 1000.675 What funds may not be included in a funding agreement?

Funds associated with programs prohibited from inclusion under 25 U.S.C. 5363(m)(1) may not be included in a funding agreement.

§ 1000.680 May the Secretary place any requirements on programs and funds that are otherwise available to Tribes/Consortium or Indians for which appropriations are made to agencies other than DOI?

No, unless the Secretary is required to develop terms and conditions that are required by law or that are required by the agency to which the appropriation is made.

§ 1000.685 What funds are used to carry out inherent Federal functions?

The funds for BIA to carry out inherent Federal functions are the funds to support functions that may not legally be delegated to an Indian Tribe if all Tribes were to assume responsibilities for all BIA programs that the Act permits.

§ 1000.690 How does BIA determine the funding amount to carry out inherent Federal functions?

(a) Between October 1st and December 31st of each fiscal year, each regional and central office shall develop a document that contains its inherent Federal function information and cost calculation for that office based either on an enacted budget or Continuing Resolution budgetary guidance, and promptly distribute that document to each Tribe/Consortium served by that office.

(b) The Secretary shall amend the document throughout the year if programs are added or changed in ways that affect the inherent Federal functions directly associated with a PSFA transferred, or proposed to be transferred, into the funding agreement of the Tribe/Consortium, and distribute that revised document to any Tribe/Consortium served by that office and seeking to transfer a PSFA into a funding agreement under the Act.

(c) Once final budget amounts are known and suballocated, the Secretary will provide an updated document within 90 days to each Tribe/Consortium.

(d) Inherent Federal function information must clearly identify the legal authority that specifically precludes delegation to a Tribe.

(e) Cost calculations must be limited to the minimum amount of funds necessary to carry out specific inherent Federal functions necessary for that office to administer PSFAs transferred to the funding agreement.

(f) The development of the document in paragraph (a) must be based on the following principles:

(1) Uniformity and consistency in the identification of inherent Federal functions and in the calculation of their associated costs;

(2) The determination of inherent Federal functions in each office is based only on those inherent Federal functions actually being performed at that office; and

(3) The Secretary shall consult with Tribes/Consortium on inherent Federal function determinations and associated cost calculations at various forums, including the Tribal Interior Budget Council (TIBC).

(g) In negotiating the amount of funds due a Tribe/Consortium in a funding agreement, the Secretary may withhold from transfer to the funding agreement only those funds to carry out inherent Federal functions directly associated with the PSFAs assumed in the funding agreement, unless otherwise expressly agreed to by the Tribe/Consortium in the funding agreement.

(h) Upon the request of a Tribe/Consortium, the Secretary must promptly provide a specific description of each inherent Federal function directly associated with a PSFA transferred, or proposed to be transferred, into the funding agreement of the Tribe/Consortium, along with the detailed basis for the Secretary's associated cost calculation.

§ 1000.695 Is the amount of funds withheld by the Secretary to cover the cost of inherent Federal functions subject to negotiation?

Yes, the Secretary's calculation of such costs is an appropriate subject during the negotiation of a funding agreement because it affects the amount of funds available for transfer to the funding agreement. If the Tribe/Consortium and the Secretary are unable to agree on the amount of funds to be withheld by the Secretary to cover the Secretary's expense of carrying out inherent Federal functions directly associated with the PSFAs assumed in the funding agreement, the Tribe/Consortium may exercise any of its options under 25 U.S.C. 5366(c), including the final offer process in subpart I of this part.

§ 1000.700 May a Tribe/Consortium continue to negotiate a funding agreement pending an appeal of funding amounts associated with inherent Federal functions?

Yes, pending appeal of funding amounts associated with inherent Federal functions, any Tribe/Consortium may continue to negotiate a funding agreement using the information under § 1000.690 that is being appealed. This information will be subject to later adjustment based on the final determination of a Tribe's/Consortium's appeal.

§ 1000.705 What is a Tribal share?

A Tribal share is the portion of all funds and resources determined for a particular Tribe (or Tribes within a Consortium) that support any program within BIA, BIE, BTFA, or the Office of the Assistant Secretary for Indian Affairs and are not required by the Secretary for the performance of an inherent Federal function as described in §§ 1000.685 through 1000.695.

§ 1000.710 How does BIA determine a Tribe's/Consortium's share of funds to be included in a funding agreement?

There are typically two methods for determining the amount of funds to be included in the funding agreement:

(a) *Formula-driven.* For formula-driven programs, a Tribe's/Consortium's amount is determined by first identifying the funds for BIA to carry out inherent Federal functions and second, by applying the distribution formula to the remaining eligible funding for each program involved.

(1) Distribution formulas must be reasonably related to the function or service performed by an office, and must be consistently applied to all Tribes within each regional and agency office.

(2) The process in paragraph (a) of this section for calculating a Tribe's funding under self-governance must be consistent with the process used for calculating funds available to non-self-governance Tribes.

(b) *Tribal-specific.* For programs whose funds are not distributed on a formula basis as described in paragraph (a) of this section, a Tribe's funding amount will be determined on a Tribe-by-Tribe basis and may differ between Tribes. Examples of these funds may include special project funding, awarded competitive grants, earmarked funding, and construction or other one-time or non-recurring funding for which a Tribe is eligible.

§ 1000.715 Can a Tribe/Consortium negotiate a Tribal share for programs outside its region/agency?

Yes, where BIA services for a particular Tribe/Consortium are provided from a location outside its immediate agency or region, the Tribe may negotiate its share from the BIA location where the service is actually provided.

§ 1000.720 May a Tribe/Consortium obtain discretionary or competitive funding that is distributed on a discretionary or competitive basis?

Funds provided for Indian services/programs that have not been mandated by Congress to be distributed on a competitive/discretionary basis may be distributed to a Tribe/Consortium under a formula-driven method. In order to receive such funds, a Tribe/Consortium must be eligible and qualified to receive such funds. A Tribe/Consortium that receives such funds under a formula-driven methodology would no longer be eligible to compete for these funds.

§ 1000.725 Are all funds identified as Tribal shares always paid to the Tribe/Consortium under a funding agreement?

No, at the discretion of the Tribe/Consortium, Tribal shares may be left, in whole or in part, with BIA for certain programs. This is referred to as a ''retained Tribal share.''

§ 1000.730 How are savings that result from downsizing allocated?

Funds that are saved as a result of downsizing in BIA are allocated to Tribes/Consortium in the same manner as Tribal shares as provided for in § 1000.710.

§ 1000.735 Do Tribes/Consortium need Secretarial approval to reallocate funds between programs that the Tribe/Consortium administers under the funding agreement?

No, except with respect to programs described in 25 U.S.C. 5363(b)(2) or (c) or as otherwise required by law, the Secretary does not have to approve the reallocation of funds between programs that a Tribe/Consortium administers under a funding agreement. However, reallocation of funds for construction project(s) included in a funding agreement must be done in accordance with subpart K of this part.

§ 1000.740 Can funding amounts negotiated in a funding agreement be adjusted during the year it is in effect?

Yes, funding amounts negotiated in a funding agreement may be adjusted under the following circumstances:

(a) *Congressional action:*

(1) Increases/decreases as a result of Congressional appropriations and/or a

directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to BIA, self-governance Tribes/Consortium, and Tribes/Consortium not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution among regions and Tribes.

(4) A Tribe/Consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the Tribe/Consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate the amounts and make every effort to correct such errors.

(c) *Mutual Agreement.* Both the Tribe/Consortium and the Secretary may agree to renegotiate amounts at any time.

Establishing Self-Governance Stable Base Budgets

§ 1000.745 What are self-governance stable base budgets?

(a) A Tribe/Consortium self-governance stable base budget is the amount of recurring funding to be transferred to the Tribe/Consortium, for a period specified in the funding agreement. This amount must be adjusted to reflect subsequent annual changes in Congressional appropriations. It includes amounts that are eligible to be base transferred or have been base transferred from BIA budget accounts to self-governance budget accounts. As allowed by Congress, self-governance stable base budgets are derived from:

(1) A Tribe's/Consortium's Public Law 93–638 contract amounts;

(2) Negotiated agency, regional, and central office amounts;

(3) Other recurring funding;

(4) Special Projects, if applicable;

(5) Programmatic shortfall;

(6) Tribal priority allocation increases and decreases;

(7) Pay costs and retirement cost adjustments; and

(8) Any other inflationary cost adjustments.

(b) Self-governance stable base budgets must not include any non-recurring program funds, construction and wildland firefighting accounts, Congressional earmarks, or other funds specifically excluded by Congress. These funds are negotiated annually and may be included in the funding agreement but must not be included in the self-governance stable base budget.

(c) Self-governance stable base budgets may not include other recurring type programs that are currently in Tribal priority allocations (TPA) such as general assistance, housing improvement program (HIP), road maintenance and contract support. Should these later four programs ever become base transferred to Tribes, then they may be included in a self-governance Tribe's stable base budget.

(d) A funding agreement shall not specify the funding associated with a program described in 25 U.S.C. 5363(b)(2) or (c) without the Secretary's agreement.

§ 1000.750 Once a Tribe/Consortium establishes a stable base budget, are funding amounts renegotiated each year?

No, unless otherwise requested by the Tribe/Consortium, these amounts are not renegotiated each year. If a Tribe/Consortium renegotiates funding levels:

(a) It must negotiate all funding levels in the funding agreement using the process for determining funds for BIA to carry out inherent Federal functions on the same basis as other Tribes; and

(b) It is eligible for funding amounts of new programs or available programs not previously included in the funding agreement on the same basis as other Tribes.

§ 1000.755 How are self-governance stable base budgets established?

At the request of the Tribe/Consortium, a self-governance stable base budget identifying each Tribe's funding amount is included in BIA's budget justification for the following year, subject to Congressional appropriation.

§ 1000.760 How are self-governance stable base budgets adjusted?

Self-governance stable base budgets must be adjusted as follows:

(a) *Congressional action.*

(1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to BIA, self-governance Tribes/Consortium, and Tribes/Consortium not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution among regions and Tribes.

(4) A Tribe/Consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the Tribe/Consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate such amounts and make every effort to correct the errors.

(c) *Mutual agreement.* Both the Tribe/Consortium and the Secretary may agree to renegotiate amounts at any time.

Subpart G—Funding Agreements for Non-BIA Programs

§ 1000.801 What is the purpose of this subpart?

This subpart describes program eligibility, funding, terms, and conditions of funding agreements for non-BIA programs.

§ 1000.805 What is a funding agreement for a non-BIA program?

Funding agreements for non-BIA programs are legally binding and mutually enforceable agreements between a bureau and a Tribe/Consortium participating in the self-governance program that contain:

(a) A description of that portion or portions of a bureau program that are to be performed by the Tribe/Consortium; and

(b) Associated funding, terms and conditions under which the Tribe/Consortium will assume a program, or portion of a program.

§ 1000.810 What non-BIA programs are eligible for inclusion in a funding agreement?

Programs authorized by sections 403(b)(2) and 403(c) (25 U.S.C. 5363(b)(2) and 5363(c)), as amended, are eligible for inclusion in a funding agreement. The Secretary will publish annually a list of these programs in accordance with 25 U.S.C. 5372(c)(3) and (4).

§ 1000.815 Are there non-BIA programs for which the Secretary must negotiate for inclusion in a funding agreement subject to such terms as the parties may negotiate?

Yes, those programs, or portions thereof, that are eligible for inclusion in funding agreements under section 403(b)(2) (25 U.S.C. 5363(b)(2).

§ 1000.820 What programs are included under section 403(b)(2) (25 U.S.C. 5363(b)(2))?

Those non-BIA programs, or portions thereof, that are eligible for inclusion in funding agreements under the Act, as amended.

§ 1000.825 What programs are included under section 403(c) (25 U.S.C. 5363(c))?

Non-BIA programs within the Department of special geographic, historical, or cultural significance to participating Tribes, individually or as members of a Consortium, are eligible for inclusion in funding agreements under section 403(c) (25 U.S.C. 5363(c)).

§ 1000.830 What does ''special geographic, historical or cultural'' mean?

(a) Geographic generally refers to all lands presently ''on or near'' an Indian reservation, and all other lands within ''Indian country,'' as defined by 18 U.S.C. 1151. In addition, ''geographic'' includes:

(1) Lands of former reservations;

(2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);

(3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and

(4) Lands and waters pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

(b) Historical generally refers to programs or lands having a particular history that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.

(c) Cultural refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering of medicines or materials such as grasses for basket weaving; or

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

(d) In determining whether a Tribe/Consortium has demonstrated a non-BIA program's special geographic, historical or cultural significance to such Tribe/Consortium, the Secretary shall interpret each Federal law and regulation in a manner that will facilitate the inclusion of a program in, and the implementation of, a funding agreement.

§ 1000.835 Under section 403(b)(2) (25 U.S.C. 5363(b)(2)), when must programs be awarded non-competitively?

Non-BIA programs eligible for inclusion in funding agreements under the Act, as amended, must be awarded non-competitively.

§ 1000.840 May a non-BIA bureau include in a funding agreement, on a non-competitive basis, programs of special geographic, historical, or cultural significance?

Yes, if there is a special geographic, historical, or cultural significance to the program or activity administered by the bureau, the law affords the non-BIA bureau the discretion to include the programs or activities in a funding agreement on a non-competitive basis.

§ 1000.845 Are there any non-BIA programs that may not be included in a funding agreement?

(a) Inherently Federal functions in accordance with 25 U.S.C. 5361(6) and 5363(k).

(b) Programs where the statute establishing the existing program does not authorize the type of participation sought by the Tribe/Consortium. In determining whether a statute ''does not authorize the type of participation sought by'' the Tribe/Consortium within the meaning of 25 U.S.C. 5363(k), the Department shall take the following factors into consideration:

(1) Tribes need not be identified in an authorizing statute in order for a program, or element of a program, to be included in a funding agreement;

(2) The lack of specificity in a statute by itself does not create a blanket exclusion from inclusion of a program, or element of a program, in a funding agreement; and

(3) It is not an adequate ground to refuse to compact specific functions that are not inherently Federal in character, simply because an organic statute vests an agency with generic management authority over a broad category of land.

(c) The Secretary shall interpret each Federal law and regulation in a manner that facilitates:

(1) The inclusion of programs in funding agreements; and

(2) The implementation of funding agreements.

§ 1000.850 Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA funding agreement?

No, the Act, as amended, favors the inclusion of a wide range of programs.

§ 1000.855 Will Tribes/Consortia participate in the Secretary's determination of what is to be included on the annual list of available programs?

Yes, the Secretary must consult each year with Tribes/Consortia participating in self-governance programs regarding which bureau programs are eligible for inclusion in funding agreements. If a Tribe/Consortium makes a written request for a program to be included on the annual list for non-BIA reporting found in subpart P of this part (§§ 1000.2010(c) and 1000.2012), the Secretary must provide a written rationale if the Secretary does not include such program.

§ 1000.860 How will the Secretary consult with Tribes/Consortia in developing the list of available programs?

(a) The Secretary shall consult with Tribes/Consortia in developing the list of available programs in accordance with subpart T of this part.

(b) In addition to the requirements in subpart T of this part:

(1) The Secretary must publish the previous year's list of available programs in accordance with 25 U.S.C. 5372(c)(3) in the **Federal Register** prior to October 1 of each year. The list must include:

(i) All of the Secretary's proposed additions and revisions for the coming year with an explanation; and

(ii) Programmatic targets detailed in § 1000.2010(e) and an initial point of contact for each bureau.

(2) If the Secretary does not plan to include a Tribal suggestion or revision in the final published list, the Secretary must provide to such Tribe/Consortium a written explanation of reasons consistent with § 1000.855.

§ 1000.865 What else is on the list in addition to eligible programs?

The list will also include programmatic targets and an initial point of contact for each bureau. Programmatic targets will be established as part of the consultation process described in § 1000.860.

§ 1000.870 May a bureau negotiate with a Tribe/Consortium for programs not specifically included on the annual list pursuant to 25 U.S.C. 5372(c)?

Yes, the annual list will specify that bureaus will negotiate for other programs eligible under 25 U.S.C. 5363(b)(2) when requested by a Tribe/Consortium. Bureaus may negotiate for 25 U.S.C. 5363(c) programs whether or not they are on the list.

§ 1000.875 How will a bureau negotiate a funding agreement for a program of special geographic, historical, or cultural significance to more than one Tribe/Consortium?

(a) If a program is of special geographic, historical, or cultural significance to more than one Tribe/Consortium, the bureau may allocate the program among the several Tribes/Consortia through separate funding agreements or select one Tribe/Consortium with whom to negotiate a funding agreement.

(b) In making a determination under paragraph (a) of this section, the bureau will, in consultation with the affected Tribes/Consortia, consider:

(1) The special significance of each Tribe's or Consortium member's interest; and

(2) The statutory objectives being served by the bureau program.

(c) The bureau's decision will be final for the Department.

§ 1000.880 When will this determination be made?

It will occur during the pre-negotiation process, subject to the timeframes in subpart H of this part (*see e.g.,* §§ 1000.1035 and 1000.1050).

§ 1000.885 What funds are included in a non-BIA funding agreement?

Non-BIA bureaus determine the amount of funding to be included in the funding agreement using the following principles:

(a) *403(b)(2) Programs (25 U.S.C. 5363(b)(2)).* In general, funds are provided in a funding agreement to the Tribe/Consortium in an amount equal to the amount that it is eligible to receive under section 106 of the Act, as amended.

(b) *403(c) Programs (25 U.S.C. 5363(c)).*

(1) The funding agreement will include:

(i) Amounts equal to the direct program or project costs the bureau would have incurred were it to operate that program at the level of work mutually agreed to in the funding agreement; and:

(ii) Allowable indirect costs; and

(iii) Such amounts as the Tribe/Consortium and the Secretary may negotiate for pre-award, start-up and direct contract support costs, or upon appropriations of such funds by Congress.

(2) A bureau is not required to include management and support funds from the regional or central office level in a funding agreement, unless:

(i) The Tribe/Consortium will perform work previously performed at the regional or central office level;

(ii) The work is not compensated in the indirect cost rate; and

(iii) Including management and support costs in the funding agreement does not result in the Tribe/Consortium being paid twice for the same work when negotiated indirect cost rate is applied.

§ 1000.890 How are indirect cost rates determined?

The Department's Interior Business Center (IBC) or other cognizant Federal agency and the Tribe/Consortium negotiate indirect cost rates. These rates are based on the applicable provisions of subpart E of 2 CFR part 200, or other applicable OMB cost circular and the provisions of title I of the Act, as amended. These rates are used generally by all Federal agencies for contracts and grants with the Tribe/Consortium, including self-governance agreements.

§ 1000.895 How does the Secretary determine the amount of indirect costs?

The Secretary determines the amount of indirect costs by:

(a) Applying the negotiated indirect cost rate to the appropriate direct cost base; or

(b) At the Tribe's/Consortium's option, negotiating a lump sum amount for indirect costs.

§ 1000.900 May the bureaus negotiate terms to be included in a funding agreement for non-BIA programs?

Yes, as provided for by 25 U.S.C. 5363(b)(2) and 5363(c) and as necessary to meet program mandates while consistent with this subpart, provided, however, that a bureau may not require in a funding agreement that a Tribe/Consortium retain, hire or assign a Federal employee in a contracted program, nor may a bureau condition its approval of a funding agreement upon a requirement that a Tribe/Consortium retain, hire or assign a Federal employee in a contracted program.

§ 1000.905 Can a Tribe/Consortium reallocate, consolidate, and redesign funds for a non-BIA program?

Yes, 25 U.S.C. 5365(d)(2) permits such reallocation, consolidation, and redesign upon joint agreement of the Secretary and the Tribe/Consortium.

§ 1000.910 Do Tribes/Consortia need Secretarial approval to reallocate funds between title I eligible programs that the Tribe/Consortium administers under a non-BIA funding agreement?

No, unless otherwise required by law, the Secretary does not have to approve the reallocation of funds with the exception of construction projects.

§ 1000.915 Can a Tribe/Consortium negotiate a funding agreement with a non-BIA bureau for which the performance period exceeds one year?

Yes, subject to the terms of the funding agreement, a Tribe/Consortium and a non-BIA bureau may agree to provide for the performance under the funding agreement to extend beyond the fiscal year. However, the Secretary may not obligate funds in excess and advance of available appropriations.

§ 1000.920 Can the terms and conditions in a non-BIA funding agreement be amended during the year it is in effect?

Yes, terms and conditions in a non-BIA funding agreement may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

§ 1000.925 What happens if a funding agreement expires before the effective date of the successor Funding Agreement?

If the effective date of a successor funding agreement is not on or before the expiration of the current funding agreement, subject to terms mutually agreed upon by the Tribe/Consortium and the Secretary at the time the current funding agreement was negotiated or in a subsequent amendment, the Tribe/Consortium may continue to carry out the program authorized under the funding agreement to the extent resources permit. During this extension period, the current funding agreement shall remain in effect, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671–2680 (1994); and the Tribe/Consortium may use any funds remaining under the funding agreement, savings from other programs or Tribal funds to carry out the program. Nothing in this section authorizes a funding agreement to be continued beyond the completion of the program authorized under the funding agreement or the amended funding agreement. This section also does not entitle a Tribe/Consortium to receive, nor does it prevent a Tribe/Consortium from receiving, additional funding under any successor funding agreement. The successor funding agreement must provide funding to the Tribe/Consortium at a level necessary for the Tribe/Consortium to perform the PSFA, or portions thereof, for the full period they were or will be performed.

Subpart H—Negotiation Process

§ 1000.1001 What is the purpose of this subpart?

This subpart provides the process and timelines for negotiating a self-governance compact with the Secretary and a funding agreement with any bureau.

§ 1000.1005 What are the phases of the negotiation process?

There are two phases of the negotiation process:

(a) The information phase; and

(b) The negotiation phase.

§ 1000.1010 Who may initiate the information phase?

Any Tribe/Consortium that has been selected to participate in self-governance may initiate the information phase.

§ 1000.1015 Is it mandatory to go through the information phase before initiating the negotiation phase?

No, a Tribe/Consortium may go directly to the negotiation phase.

§ 1000.1020 How does a Tribe/Consortium initiate the information phase?

A Tribe/Consortium initiates the information phase by sending to the Secretary a written request clearly identified as a ''Request to Initiate the Information Phase''. This request notifies the Secretary of the Tribe's/Consortium's interest in negotiating for a program(s) and request for information about the program(s). This request must be sent:

(a) If in electronic form (PDF), which is the preferred method, to [TBD]; or

(b) If in paper form by United States Mail or express courier to Director, Office of Self-Governance, at the headquarters address indicated on the official Department, OSG website.

§ 1000.1025 What information is a Tribe/Consortium encouraged to include in a Request to Initiate the Information Phase?

(a) A Tribe/Consortium is encouraged to include the following in a Request to Initiate the Information Phase:

(1) As specifically as possible, the program(s) for which the Tribe/Consortium is interested in negotiating under this subpart;

(2) The bureau, service, office, or agency (bureau) that administers the program(s) of interest;

(3) The scope(s) of program activity in which the Tribe/Consortium is interested;

(4) If applicable, a brief explanation of the cultural, historical, or geographic significance to the Tribe/Consortium of the program(s);

(5) A request for budget, staffing, and other locations of the offices providing administrative support;

(6) Other information that the Tribe/Consortium may choose to submit for the Secretary's consideration; and

(7) The Tribe's/Consortium's designated contact.

(b) The Tribe/Consortium may choose to request information and technical assistance in a Request to Initiate the Information Phase notice including, but not limited to:

(1) Information that will assist the Tribe/Consortium in initiating and/or implementing the negotiation process;

(2) Information regarding grants or funds within the bureau, or other known possible sources of funding, that may be available to the Tribe/Consortium for planning and negotiating, or renegotiating a compact and/or funding agreement;

(3) Information on any funds available within the bureau, or from other sources of funding, that the Tribe/Consortium may include in the funding agreement for performing the program(s);

(4) Information contained in the previous year, present year, and, if available, next year's budget proposed by the President at the national program level and the regional/local level;

(5) Information used to support budget allocations for the programs identified (*e.g.,* full time equivalents and other relevant factors);

(6) Information used to operate and/or evaluate a program, such as statutory and regulatory requirements and program standards;

(7) If applicable, information regarding how a program is administered by more than one bureau, including a point of contact for information for the other bureau(s); and

(8) Technical assistance from the bureau in preparing documents or materials that may be required for the Tribe/Consortium in the negotiation process.

§ 1000.1030 When should a Tribe/Consortium submit a Request to Initiate the Information Phase to the Secretary?

A Tribe/Consortium may submit a Request to Initiate the Information Phase to the Secretary at any time.

§ 1000.1035 What steps does the bureau take after a Request to Initiate the Information Phase is submitted by a Tribe/Consortium?

(a) Within 15 days of receipt of a Tribe's/Consortium's Request to Initiate the Information Phase, the bureau will respond in writing to the Tribe's/Consortium's identified point of contact and identify the person designated as the bureau's representative responsible for providing information under this subpart. The bureau representative shall in good faith fulfill the following responsibilities:

(1) In accordance with paragraph (b) of this section, provide the Tribe/Consortium with all program budget and program information from each organizational level of the bureau(s); and

(2) Notify any other bureau as required under this subpart.

(b) Within 30 calendar days of receipt of the Tribe's/Consortium's request, the bureau representative must provide to the Tribe/Consortium the information responsive to the Tribe's/Consortium's Request to Initiate the Information Phase, if otherwise consistent with the bureau's budgetary process including, at a minimum:

(1) Information regarding program, budget, staffing, and locations of the offices administering the program identified by the Tribe/Consortium and related administrative support programs; and

(2) Such other information requested by the Tribe/Consortium in its request.

(c) Upon request by a Tribe/Consortium, the bureau will provide technical assistance to the Tribe/Consortium and be available to meet with Tribal/Consortium representatives to explain the information provided and discuss other questions from the Tribe/Consortium;

(d) The bureau shall issue a written explanation if it determines it cannot provide information required under paragraph (b) within the 30-day period. If a bureau makes such a determination, then the bureau must provide any other information that is reasonably related to the Tribe/Consortium's request and the date when other information, not provided within 30 days but available for disclosure to the Tribe/Consortium, can be provided;

(e) The Secretary shall provide information under this section in a manner that facilitates the inclusion of programs in funding agreements and the implementation of funding agreements (25 U.S.C. 5369);

(f) If a bureau fails to timely provide information under this subpart, the Tribe/Consortium may:

(1) File a Freedom of Information Act request. These requests shall be considered for a fee waiver under the Freedom of Information Act; and/or

(2) Appeal in accordance with subpart R of this part.

§ 1000.1040 How does a Tribe/Consortium initiate the negotiation phase?

A Tribe/Consortium initiates the negotiation phase by sending to the Secretary a written request clearly identified as a Request to Initiate the Negotiation Phase. This request notifies the Secretary of the Tribe's/Consortium's interest in negotiating for a program(s). This request must be sent:

(a) If in electronic form (PDF), which is the preferred method, to [TBD]; or

(b) If in paper form by United States Mail or express courier to the Director, Office of Self-Governance, at the headquarters address indicated on the official Department, OSG website.

§ 1000.1045 How and when does the Secretary respond to a request to negotiate a compact or BIA funding agreement?

Within 15 days of receiving a Request to Initiate the Negotiation Phase for a

compact or BIA funding agreement, OSG will respond in writing to the Tribe's/Consortium's identified point of contact and identify the person designated as the lead Federal negotiator. OSG and the Tribe/Consortium will negotiate a compact or funding agreement in accordance with applicable provisions of this part.

§ 1000.1050 How and when does the Secretary respond to a request to negotiate a non-BIA funding agreement?

Within 15 days of receiving a Tribe's/Consortium's Request to Initiate the Negotiation Phase for a non-BIA funding agreement, the Department will take the steps in this section:

(a) If the program involves multiple bureaus, the Secretary will identify the lead Federal negotiator(s);

(b) If the program is authorized for negotiations by 25 U.S.C. 5363(b)(2), the bureau will identify the lead Federal negotiator(s).

(c) If the program may be authorized for negotiations by 25 U.S.C. 5363(c), the bureau will identify the lead Federal negotiator(s) and schedule a pre-negotiation discussion with the Tribe/Consortium as soon as possible. The purpose of the discussion is to assist the bureau in determining if the program is available for negotiation. If there is agreement that a program is eligible for inclusion in a funding agreement, the parties may jointly agree to waive this discussion.

(d) Within 10 days after convening a discussion under paragraph (c), or no later than 30 days of receipt by the Secretary of the Tribe's/Consortium's Request to Initiate the Negotiation Phase:

(1) If the program is available for inclusion in a funding agreement, the bureau will begin negotiating a non-BIA funding agreement in accordance with subpart G of this part; or

(2) If the program is unavailable for negotiation, the bureau will provide a written explanation of why the program is unavailable for inclusion in a funding agreement.

§ 1000.1055 What is the process for conducting the negotiation phase?

(a) Within 30 days of receiving a written Request to Initiate the Negotiation Phase, the bureau and the Tribe/Consortium will agree to a date to conduct an initial negotiation meeting. Subsequent meetings will be held with reasonable frequency at reasonable times.

(b) Tribe/Consortium and bureau lead negotiators must:

(1) Be authorized to negotiate on behalf of their government; and

(2) Involve all necessary persons in the negotiation process.

(c) Once negotiations have been completed, with the parties in agreement concerning all terms and conditions of a compact and/or funding agreement, the parties will acknowledge in writing the date on which agreement was reached and:

(1) The Secretary and Tribe/Consortium will finalize the compact and/or funding agreement for submission to the Tribe/Consortium within 15 days or by a mutually agreed upon date; and

(2) Upon the Secretary's receipt of a compact or funding agreement signed by the Tribe/Consortium, the Secretary will execute and return the funding agreement by a mutually agreed upon date not to exceed 45 days, and the compact by a mutually agreed upon date not to exceed 90 days.

§ 1000.1060 What issues must the bureau and the Tribe/Consortium address at negotiation meetings?

The negotiation meetings referred to in § 1000.1055 must address at a minimum the following:

(a) The specific Tribe/Consortium proposal(s) and intentions;

(b) Legal or program issues that the bureau or the Tribe/Consortium identify as concerns;

(c) Options for negotiating programs and related budget amounts, including mutually agreeable options for developing alternative formats for presenting budget information to the Tribe/Consortium;

(d) Dates for conducting and concluding negotiations;

(e) Protocols for conducting negotiations;

(f) Responsibility for preparation of a written summary of the discussions; and

(g) Who will prepare an initial draft of the compact or funding agreement, as applicable.

§ 1000.1065 What happens when a compact or funding agreement is signed?

(a) After all necessary parties have signed the compact or funding agreement, a copy is sent to the Tribe/Consortium.

(b) No later than 90 days before the proposed effective date of an executed funding agreement, the Secretary shall forward a copy of the funding agreement to each Indian Tribe/Consortium served by the local BIA Agency office that serves any Tribe/Consortium that is a party to the funding agreement. The Secretary's obligation under 25 U.S.C. 5363(f) shall not impact the funding agreement's effective date as specified under § 1000.1075.

§ 1000.1070 What happens if the Tribe/Consortium and bureau negotiators fail to reach an agreement on a compact or funding agreement?

If the bureau and Tribe/Consortium are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels) then the final offer process in subpart I of this part shall apply.

§ 1000.1075 When does the funding agreement become effective?

A funding agreement shall become effective on the date it is fully executed or as identified by its terms.

§ 1000.1080 What is a subsequent funding agreement?

A subsequent funding agreement is negotiated after a Tribe's/Consortium's existing funding agreement. The parties to the funding agreement should generally use the terms of the existing funding agreement to expedite and simplify the exchange of information and the negotiation process.

§ 1000.1085 How is the negotiation of a subsequent funding agreement initiated?

Although a written request is desirable to document the precise request and date of the request, a written request is not mandatory. If either party anticipates a significant change in an existing program in the funding agreement, it should notify the other party of the change at the earliest possible date so that the other party may plan accordingly.

§ 1000.1090 What is the process for negotiating a subsequent funding agreement?

The Tribe/Consortium and the bureau shall use the procedures in §§ 1000.1005 through 1000.1070.

Subpart I—Final Offer

§ 1000.1101 What is the purpose of this subpart?

This subpart explains the final offer process provided by the Act for resolving, within a specific timeframe, disputes that may develop in negotiation of compacts, funding agreements, or amendments thereof.

§ 1000.1105 When should a final offer be submitted?

The Tribe/Consortium may submit a final offer when it has determined that the Tribe/Consortium and the Secretary are unable to agree, in whole or in part, on the terms of a compact, funding agreement, or amendment (including funding levels).

§ 1000.1110 How does a Tribe/Consortium submit a final offer?

(a) A Tribe/Consortium must submit its written final offer for a compact or funding agreement, or amendment thereof:

(1) If in electronic form (PDF), which is the preferred method, to [TBD] for any DOI program; or

(2) If in paper form by United States Mail or express courier to the Director, Office of Self-Governance, at the headquarters address indicated in the official Department, OSG website.

(b) The document should be separate from the compact, funding agreement or amendment and clearly identified as a ''Final Offer.''

§ 1000.1115 What does a final offer contain?

A final offer must contain a description of the disagreement between the Secretary and the Tribe/Consortium, the Tribe's/Consortium's final proposal to resolve the disagreement, including any draft proposed terms to be included in a compact, funding agreement, or amendment, and the name and contact information for the person authorized to act on behalf of the Tribe/Consortium.

§ 1000.1120 When does the 60-day review period begin?

The 60-day review period begins on the date the final offer is received at the office's mailing or email address identified in this subpart. Demonstration of receipt includes a postal return receipt, express delivery service receipt, or date stamp; all email submissions are presumed received by the Secretary no later than the next business day following transmission from the Tribe/Consortium.

§ 1000.1125 How does the Department acknowledge receipt of final offer?

(a) Within 10 days of receipt by the officials designated by the Secretary in § 1000.1110, the Department will send the Tribe/Consortium a written acknowledgement of the final offer.

(b) The acknowledgement reference in paragraph (a) shall include:

(1) A statement acknowledging receipt of the final offer;

(2) The date the final offer was received and the last day of the applicable statutory review period;

(3) If applicable, the Secretary may request additional information. A request for more information has no effect on deadlines for a response under this subpart; and

(4) A statement notifying the Tribe/Consortium that technical assistance is available upon request to comply with paragraph (b)(3).

§ 1000.1130 May the Secretary request and obtain an extension of time of the 60-day review period?

(a) Yes, the Secretary may request an extension of time before the expiration of the 60-day review period. The Tribe/Consortium may either grant or deny the Secretary's request for an extension. To be effective, any grant of extension of time must be in writing and be signed by the person authorized by the Tribe/Consortium to grant the extension before the expiration of the 60-day review period.

(b) The deadline described in paragraph (a) may be extended for any additional length of time as agreed upon in writing by the Tribe/Consortium and the Secretary, and

(c) The 60-day period may be extended up to 30 days for circumstances beyond the control of the Secretary, upon written request from the Secretary to the Tribe/Consortium.

(d) A Tribe/Consortium must respond within 10 days of receiving the Secretary's request for an extension under paragraph (c).

§ 1000.1135 What happens if the Secretary takes no action within the 60-day period (or any extensions thereof)?

The final offer is:

(a) Accepted automatically by operation of law for a compact or funding agreement provision except as to its application to a program described under 25 U.S.C. 5363(c); or

(b) Rejected automatically by operation of law with respect to any program described under 25 U.S.C. 5363(c).

§ 1000.1140 Once the Tribe/Consortium's final offer has been accepted or accepted by operation of law, what is the next step?

After the Tribe/Consortium's final offer is accepted or accepted by the operations of law, within 10 days the parties will amend the compact or funding agreement to incorporate the accepted terms of the final offer.

§ 1000.1145 On what basis may the Secretary reject a final offer?

The Secretary may reject a final offer for one of the following reasons:

(a) The amount of funds proposed in the final offer exceeds the applicable funding level to which the Tribe/Consortium is entitled under the Act;

(b) The program that is the subject of the final offer is an inherent Federal function that cannot legally be delegated to a Tribe/Consortium or is subject to discretion of the Secretary under the Act;

(c) The Tribe/Consortium cannot carry out the program in a manner that would not result in significant danger or risk to the public health or safety, to natural resources, or to trust resources;

(d) The Tribe/Consortium is not eligible to participate in self-governance under 25 U.S.C. 5362;

(e) The funding agreement would violate a Federal statute or regulation; or

(f) With respect to a program or portion of a program included in a final offer pursuant to 25 U.S.C. 5363(b)(2), the program or the portion of the program is not otherwise available under 25 U.S.C. 5321(a)(1)(E).

§ 1000.1150 How does the Secretary reject a final offer?

The Secretary rejects a final offer by providing written notice to the Tribe/Consortium based on the criteria in § 1000.1145 not more than 60 days after the receipt of a final offer, or a later date in accordance with § 1000.1130.

§ 1000.1155 What is the ''significant danger'' or ''risk'' to the public health or safety, to natural resources, or to trust resources?

A significant danger or risk is determined on a case-by-case basis in accordance with 25 U.S.C. 5366.

§ 1000.1160 Is technical assistance available to a Tribe/Consortium to overcome the objections stated in the Secretary's rejection of a final offer?

Yes, the Secretary must provide technical assistance to overcome the objection stated in the notification of the rejection of the final offer.

§ 1000.1165 If the Secretary rejects all or part of a final offer, is the Tribe/Consortium entitled to an appeal?

Yes, the Tribe/Consortium is entitled to appeal the decision of the Secretary, with an agency hearing on the record, and the right to engage in full discovery relevant to any issue raised in the matter. The procedures for appeals are found in subpart R of this part. Alternatively, at its option, the Tribe/Consortium has the right to initiate an action challenging the Secretary's decision in U.S. District Court under 25 U.S.C. 5331(a).

§ 1000.1170 Do those portions of the compact, funding agreement, or amendment not in dispute go into effect?

Yes, subject to 25 U.S.C. 5366(c)(6)(A)(iv).

§ 1000.1175 Does appealing the final offer decision prevent the Secretary and the Tribe/Consortium from entering into any accepted compact, funding agreement or amendment provisions that are not in dispute?

No, appealing the decision does not prevent the Secretary and Tribe/Consortium from entering into any

accepted, severable provisions of a compact, funding agreement, or amendment that are not in dispute.

§ 1000.1180 What is the burden of proof in an appeal of a rejection of a final offer?

With respect to any appeal, hearing, or civil action, brought under this subpart, the Secretary shall have the burden of clearly demonstrating the validity of the grounds for rejecting the final offer.

Subpart J—Waiver of Regulations

§ 1000.1201 What regulations apply to Tribes/Consortia?

All regulations that govern the operation of programs included in a funding agreement apply unless waived under this subpart. To the maximum extent practical, the parties should identify these regulations in the funding agreement.

§ 1000.1205 Can the Secretary grant a waiver of regulations to a Tribe/Consortium?

Yes, a Tribe/Consortium may ask the Secretary to grant a waiver of some or all Department regulation(s) applicable to a program, in whole or in part, operated by a Tribe/Consortium under a compact or funding agreement.

§ 1000.1210 When can a Tribe/Consortium request a waiver of a regulation?

A Tribe/Consortium may request a waiver of a regulation:

(a) As part of the negotiation process;

(b) At any time after a funding agreement has been executed; or

(c) Following a denial decision, provided that the Tribe/Consortium acknowledges that the submission commences a new 120-day review period under § 1000.1240.

§ 1000.1215 How does a Tribe/Consortium obtain a waiver?

(a) A Tribe/Consortium must submit its written waiver request for any DOI compact, funding agreement, or amendment thereof:

(1) In electronic form (PDF), which is the preferred method, by email to [TBD]; or

(2) If in paper form by United States Mail or express courier to Director, Office of Self-Governance at the headquarters address indicated on the official Department OSG website.

(b) The waiver request, including one made under § 1000.1210(a), must be a separate document from the compact, funding agreement, or amendment and clearly identified as a ''Waiver Request.''

§ 1000.1220 How does a Tribe/Consortium operating a Public Law 102–477 Plan obtain a waiver?

(a) For a waiver request involving any program that has been integrated under an approved plan authorized by Public Law 102–477, as amended, or proposed to be integrated under a Public Law 102–477 plan, the Tribe must submit the request to the BIA—Division of Workforce Development.

(b) The provisions of 25 U.S.C. 3406 (b), *et seq.,* governing submission, review, decision, dispute resolution, and appeal apply to a waiver request submitted under paragraph (a).

(c) If a waiver of regulations had been previously obtained for a program administered by the Department that is later integrated into a plan authorized by Public Law 102–477, such waiver of regulations will continue to be in effect.

§ 1000.1225 May a Tribe/Consortium request an optional meeting or other informal discussion to discuss a waiver request?

(a) Yes, a Tribe/Consortium may request an optional meeting or other informal discussion with the appropriate bureau official(s).

(b) To provide reasonable time for consideration, the Tribe/Consortium may request a meeting or other informal discussion to be held with the appropriate bureau official(s) no less than 30 days before the end of the 120-day period, unless the parties agree on another date.

(c) For all purposes relating to these meeting or informal discussion procedures, the parties are the designated representatives of the Tribe/Consortium and the appropriate bureau official(s) from whom the waiver is requested.

§ 1000.1230 Is a bureau required to provide technical assistance to a Tribe/Consortium concerning waivers?

Yes.

(a) *Prior to submission of a waiver request.* A Tribe/Consortium considering a waiver request under this part may request, and a bureau shall provide, technical assistance to assist the Tribe/Consortium to prepare and submit the waiver request.

(b) *After submission of a waiver request.* Not later than 60 days after receipt of a Tribe's/Consortium's waiver request, unless the parties agree on another date, a bureau shall, if applicable:

(1) Provide technical assistance to overcome any objection which the bureau might have to the request while a waiver request is under consideration; and/or

(2) Identify additional information that may assist the bureau in making a decision.

§ 1000.1235 How does the Secretary respond to a waiver request?

Within 10 business days of receipt, the officials designated by the Secretary in § 1000.1215 will email to the Tribe/Consortium a letter:

(a) Acknowledging receipt of the waiver request; and

(b) Identifying the date the waiver request was received and the last day of the applicable statutory review period.

§ 1000.1240 When must the Secretary make a decision on a waiver request?

(a) Not later than 120 days after receipt of a waiver request by the Secretary and the Secretary's designated officials in accordance with § 1000.1215.

(b) This 120-day period may be extended for any length of time, as agreed upon by both the Tribe/Consortium and the Secretary.

§ 1000.1245 How does the Secretary make a decision on the waiver request?

(a) The Secretary must issue a written decision explaining the rationale for denying or approving the requested waiver.

(b) If the Secretary issues a written decision denying the requested waiver, it must describe the basis for the specific finding that the identified text in the regulation may not be waived because such a waiver is prohibited by Federal law.

(c) The decision is final for the Department.

§ 1000.1250 What happens if the Secretary neither approves nor denies a waiver request within the time specified in § 1000.1240?

If the Secretary fails to make a determination with respect to a waiver request within the period specified in § 1000.1240 (including any extension agreed to under that section), the waiver request is automatically, by operation of law,

(a) Deemed approved except for programs eligible under section 403(b)(2) or section 403(c) (25 U.S.C. 5363(b)(2) or 5363(c)), as amended; or

(b) Deemed denied with respect to programs eligible under section 403(b)(2) or section 403(c) (25 U.S.C. 5363(b)(2) or 5363(c)), as amended. Such deemed denial is a final decision for the Department.

§ 1000.1255 May a Tribe/Consortium appeal the Secretary's decision to deny its request for a waiver of a regulation?

Yes, the Tribe/Consortium may appeal the Secretary's decision

consistent with applicable law, including 25 U.S.C. 5331. The burden of proof shall be as set forth in § 1000.2315.

§ 1000.1260 What is the term of a waiver?

Upon approval, a waiver is deemed approved until such time as rescinded by the Tribe/Consortium.

§ 1000.1265 May a Tribe/Consortium withdraw a waiver request?

Yes. If a Tribe/Consortium chooses to withdraw a waiver request before the Secretary makes a decision, it must do so in writing prior to the end of the 120-day time frame.

§ 1000.1270 May a Tribe/Consortium have more than one waiver request pending before the Secretary at the same time?

Yes. A Tribe/Consortium may have more than one waiver request pending before the Secretary at the same time, provided that each waiver request affects a different regulatory provision.

§ 1000.1275 May a Tribe/Consortium continue to negotiate a funding agreement pending final decision on a waiver request?

Yes, pending final decision on a waiver request, any Tribe/Consortium may continue to negotiate and implement a funding agreement. The regulation will apply until it is waived. The funding agreement will be subject to later adjustment based on an affirmative final decision on the Tribe's/Consortium's waiver request.

§ 1000.1280 How is a waiver decision documented for the record?

The waiver approval is made part of the funding agreement by attaching a copy of it to the funding agreement and by mutually executing any necessary conforming amendments to the funding agreement. The waiver requests and bureau's decision document(s), pursuant to § 1000.1245, will be posted and archived on the OSG website or successor technology within 30 days of the decision. Such posting/archiving shall include deemed approved and deemed denied decisions under § 1000.1250. All decisions shall be made available on request, and a summary of decisions will be included in the Self Governance Annual Report to Congress.

Subpart K—Construction

Construction Definitions

§ 1000.1301 What key construction terms do I need to know?

Budget means a statement of the funds required to complete the scope of work in a construction project. For cost reimbursement agreements, budgets may be stated using broad categories such as planning, design, construction, project administration, and contingency. For fixed price agreements, budgets may be stated as lump sums, unit cost pricing, or a combination thereof.

Construction management services (CMS) means activities limited to administrative support services; coordination; and monitoring oversight of the planning, design, and construction process. CMS activities typically include:

(a) Coordination and information exchange between the Tribe/Consortium and the Federal Government;

(b) Preparation of a Tribe's/Consortium's project agreement; and

(c) A Tribe's/Consortium's subcontract scope of work identification and subcontract preparation, and competitive selection of construction contract subcontractors.

Construction phase is the phase of a construction project during which the project is constructed, and includes labor, materials, equipment and services necessary to complete the work, in accordance with the construction project agreement.

Construction program or *construction project* means a Tribal undertaking relating to the administration, planning, environmental determination, design, construction, repair, improvement, or expansion of roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community, health, irrigation, agriculture, conservation, flood control, transportation, or port facilities, or for other Tribal purposes.

Construction project agreement means a negotiated agreement between the Secretary and a Tribe/Consortium, that at a minimum:

(a) Establishes project phase start and completion dates, which may extend over a period of one or more years;

(b) Provides a general description of the project, including the scope of work, references to design criteria and standards by which it will be accomplished, and other terms and conditions;

(c) Identifies the responsibilities of the Tribe/Consortium and the Secretary;

(d) Addresses how project-related environmental considerations will be addressed;

(e) Identifies the owner and operations and maintenance entity of the proposed work;

(f) Provides a budget;

(g) Provides a payment process;

(h) Establishes the duration of the agreement based on the time necessary to complete the specified scope of work, which may be one or more years; and

(i) Identifies the agreement of the Secretary and Tribe/Consortium over which entity will bear any additional costs necessary to meet changes in scope, or errors or omissions in design and construction.

Design phase is the phase of a construction project during which project plans, specifications, and other documents are prepared that are used to construct the project. Site investigation, final site selection and environmental review and determination activities are completed in this phase if not conducted as part of the planning phase.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

NHPA means the National Historic Preservation Act (16 U.S.C. 470 *et seq.*).

Planning phase is the phase of a construction project agreement during which planning services are provided.

Planning services may include performing a needs assessment, completing and/or verifying master plans, developing justification documents, conducting pre-design site investigations, developing budget cost estimates, conducting feasibility studies as needed, conducting environmental review activities and justifying the need for the project.

SHPO means State Historic Preservation Officer.

Scope of work or *specific scope of work* means a brief written description of the work to be accomplished under the construction project, sufficient to confirm that the project is consistent with the purpose for which the Secretary has allocated funds.

THPO means Tribal Historic Preservation Officer.

Purpose and Scope

§ 1000.1305 What construction projects and programs included in a funding agreement or construction project agreement are subject to this subpart?

(a) All construction programs and construction projects included in a funding agreement under title IV are subject to this subpart.

(b) The following programs and activities are not construction programs and activities for the purposes of this subpart:

(1) Activities limited to providing planning services, administrative support services, coordination, responsibility for the construction project, site-management and administration of the project, which may include cost management, project budgeting, project scheduling and procurement.

(2) The BIA Housing Improvement Program;

(3) The BIA Road Maintenance Program and other road maintenance activities as maintenance is defined by 23 U.S.C. 101;

(4) Operation and maintenance programs;

(5) Child Care Development Fund projects using funds transferred under an approved Public Law 102–477 plan; and

(6) Non-403(c) Programs that are less than $100,000, subject to 25 U.S.C. 5363(e)(2), other applicable Federal law, and § 1000.1515.

§ 1000.1306 May a program or project-specific grant or contracting mechanism involving construction and related activities satisfy the requirements of this subpart?

Yes, program or project-specific contracting mechanisms or agreements involving construction and related activities will satisfy the requirements of this subpart and may be incorporated into the Tribe/Consortium's funding agreement, provided that such program or project-specific contracting mechanism or agreement addresses all the requirements of 25 U.S.C. 5367 that are applicable to the construction program or project. Nothing herein shall require the Secretary to duplicate the Federal requirements of 25 U.S.C. 5367 that are applicable to the project in the program or project-specific contracting mechanism or agreement.

§ 1000.1307 May the Secretary accept funds from another Department for a program or project involving construction and related activities for transfer to the Tribe/Consortium under its funding agreement or construction project agreement?

Yes, the Secretary may accept funds from another Department for a program or project involving construction and related activities for transfer to the Tribe/Consortium under its funding agreement or construction project agreement, subject to an interagency agreement between the Secretary and the Federal agency, with the concurrence of the Tribe/Consortium before such interagency agreement is finalized, that addresses the purpose, intent, Federal oversight and other responsibilities for the construction program or project, and related activities.

§ 1000.1310 What alternatives are available for a Tribe/Consortium to perform a construction program or project?

(a) As authorized by 25 U.S.C. 5367(g), and at the option of the Tribe/Consortium, construction project funding proposals shall be negotiated with the Secretary pursuant to the statutory process in 25 U.S.C. 5324, and any resulting agreement shall be incorporated into the funding agreement as an ''addendum''; or

(b) A Tribe/Consortium may negotiate a construction project with the Secretary pursuant to the statutory process in 25 U.S.C. 5324, and incorporate any resulting construction project agreement into a separate title I construction contract and funding agreement subject to title I and the part 900 regulations, including subpart J (Construction) of part 900. Such construction project shall not be subject to this subpart.

§ 1000.1315 Does this subpart create an agency relationship?

No, a BIA or non-BIA construction program or project does not automatically create an agency relationship. However, Federal law, provisions of a funding agreement, or Federal actions may create an agency relationship.

Notification and Project Assumption

§ 1000.1320 Is the Secretary required to consult with affected Tribes/Consortia concerning construction projects and programs?

Yes, before developing a new project resource allocation methodology and application process the Secretary must consult with all Indian Tribes/Consortia as set forth in subpart I of this part.

§ 1000.1325 When does the Secretary confer with a Tribe/Consortium concerning Tribal preferences as to size, location, type, and other characteristics of a project?

Before spending any funds for planning, design, construction, or renovation projects, whether or not subject to a competitive application and ranking process, the Secretary must confer with any Indian Tribe/Consortium that would be significantly affected by the expenditure to determine and honor Tribal preferences whenever practicable concerning the size, location, type, and other characteristics of the project.

§ 1000.1330 What does a Tribe/Consortium do if it wants to perform a construction project or program under 25 U.S.C. 5367?

(a) A Tribe/Consortium may start the process of developing a construction project proposal to include in a funding agreement or construction project agreement by:

(1) Notifying the Secretary in writing that the Tribe/Consortium wishes to perform one or more construction projects under 25 U.S.C. 5367; or

(2) Submitting a proposed construction project agreement for consideration and negotiation, or

(3) A combination of the actions described in paragraphs (a)(1) and (2) of this section.

(b) Within 30 days after receiving a request from a Tribe/Consortium, the Secretary and the Tribe/Consortium shall exchange all applicable information available to each party about the project including, but not limited to, planning, construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports and archaeological reports.

§ 1000.1335 What must a Tribal proposal for a construction program or project contain?

A construction project proposal must contain all of the required elements of a construction project contained in § 1000.1355. In addition to these minimum requirements, a Tribe/Consortium may include additional items for negotiation.

§ 1000.1340 May multiple projects be included in a single construction project agreement or funding agreement that includes a construction project?

Yes, a Tribe/Consortium may include multiple projects in a single funding agreement or construction project agreement if funded by the same bureau, or may add additional projects by amendment(s) to an existing funding agreement or construction project agreement with the same bureau.

§ 1000.1345 Must a construction project proposal incorporate provisions of Federal construction guidelines and manuals?

(a) No, the Tribe/Consortium and the Secretary must agree upon and specify appropriate building codes and architectural and engineering standards (including health and safety) which must be in conformity with nationally recognized standards for comparable projects as long as they meet or exceed the requirements of 25 U.S.C. 5367(d).

(b) The Secretary may provide, or the Tribe/Consortium may request, Federal construction guidelines and manuals for consideration by the Tribe/Consortium in the preparation of its construction project proposal. If Tribal construction codes and standards (including national, regional, State, or Tribal building codes or contrition industry standards) that meet or exceed otherwise applicable standards, the Secretary must accept the Tribally proposed standards.

§ 1000.1350 What provisions relating to a construction project or program may be included in a funding agreement or construction project agreement?

Unless otherwise agreed to in writing by a Tribe/Consortium, no provision of title 41, United States Code, the Federal Acquisition Regulations, or any other law or regulation pertaining to Federal procurement, shall apply to any construction program or project carried out under title IV of the Act. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.

§ 1000.1355 What provisions must a Tribe/Consortium include in a construction project agreement or funding agreement that contains a construction project or program?

(a) For each construction project or program carried out by the Tribe/Consortium under 25 U.S.C. 5367, the Tribe/Consortium and the Secretary shall negotiate a provision in the construction project agreement or funding agreement that identifies:

(1) The approximate start and completion dates for the project, which may extend over a period of one or more years;

(2) A general description of the project, including the scope of work, references to design criteria, and other terms and conditions;

(3) The responsibilities of the Tribe/Consortium for the project;

(4) How project-related environmental considerations will be addressed;

(5) The amount of Federal funds provided for the project;

(6) The terms and conditions by which funding for the project, including contingency funds, will be paid to the Tribe/Consortium by the Secretary;

(7) The obligations of the Tribe/Consortium to comply with the applicable codes and standards referenced in 25 U.S.C. 5367(d) and applicable Federal laws and regulations;

(8) The agreement of the parties over who will bear any additional costs necessary to meet changes in scope, or errors or omissions in design and construction;

(9) The entity responsible to issue any Certificate of Occupancy, if applicable; and

(10) Other terms and conditions the parties mutually agree upon.

(b) The Tribe/Consortium shall include in the construction project agreement or funding agreement that includes a construction project or program a provision for the submission to the Secretary of progress reports and financial status reports not less than semi-annually commencing after funding for the project is received by the Tribe/Consortium and continuing until the construction of the project is complete.

Requirements and Standards

§ 1000.1360 What codes, standards and architects and engineers must a Tribe/Consortium use when performing a construction project under this part?

(a) In carrying out a construction project under this subpart, a Tribe/Consortium must:

(1) Adhere to applicable Federal, State, local, and Tribal building codes, architectural and engineering standards, and applicable Federal guidelines regarding design, space, and operational standards, appropriate for the particular project; and

(2) Use only architects and engineers who:

(i) Are licensed to practice in the State in which the facility will be built; and

(ii) Certify that:

(A) They are qualified to perform the work required by the specific construction involved; and

(B) Upon completion of design, the plans, and specifications meet or exceed the applicable construction and safety codes.

NEPA Process

§ 1000.1365 Are Tribes/Consortia required to carry out activities involving NEPA in order to enter into a construction project agreement?

No, Tribes/Consortia are not required to carry out any activities involving NEPA in order to enter into a construction project agreement.

§ 1000.1370 How may a Tribe/Consortium elect to assume some Federal responsibilities under NEPA?

(a) A Tribe/Consortium may, subject to the agreement of the Secretary, elect to assume some Federal responsibilities under NEPA, NHPA, and related provisions of other laws and regulations that would apply if the Secretary were to undertake a construction project by adopting a resolution:

(1) Designating a certifying Tribal officer to represent the Indian Tribe and to assume the status of a responsible Federal official under those Acts, laws, or regulations; and

(2) Accepting the jurisdiction of the United States courts for the purpose of enforcing the responsibilities of the certifying Tribal officer assuming the status of a responsible Federal official under those Acts, laws, or regulations.

(b) Notwithstanding paragraph (a), nothing in this section authorizes the Secretary to include in any compact or funding agreement duties of the Secretary under NEPA, NHPA, and other related provisions of law that are inherent Federal functions.

§ 1000.1375 How may a Tribe/Consortium carry out activities involving NEPA without assuming some Federal responsibilities?

A Tribe/Consortium may elect to carry out some or all activities involving development and preparation of applicable documentation under NEPA, NHPA and related provisions of other laws and regulations for final review and approval by the Secretary.

§ 1000.1379 Are Tribes/Consortia required to adopt a separate resolution or take equivalent Tribal action to assume some environmental responsibilities of the Secretary under NEPA, NHPA, and related laws and regulations for each construction project?

No, the Tribe/Consortium may adopt a single resolution or take equivalent Tribal action to assume some environmental responsibilities of the Secretary for NEPA, NHPA, and related laws and regulations for a single project, multiple projects, a class of projects, or all projects performed under 25 U.S.C. 5367.

§ 1000.1380 What additional provisions of law are related to NEPA and NHPA?

(a) Depending upon the nature and the location of the construction project, environmental laws related to NEPA and NHPA may include:

(1) Archaeological and Historical Data Preservation Act (54 U.S.C. 3120501 through 3120508);

(2) Archeological Resources Protection Act (16 U.S.C. 470aa *et seq.*);

(3) Clean Air Act (42 U.S.C. 7401 *et seq.*);

(4) Clean Water Act (33 U.S.C. 1251 *et seq.*);

(5) Coastal Barrier Improvement Act (16 U.S.C. 3501 *et seq.*);

(6) Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(7) Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*);

(8) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*);

(9) Endangered Species Act (16 U.S.C. 1531 *et seq.*);

(10) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(11) Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 through 1445; 16 U.S.C. 1431 through 1447F; 33 U.S.C. 2801 through 2805);

(12) National Trails System Act (16 U.S.C. 1241 *et seq.*);

(13) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*);

(14) Noise Control Act (42 U.S.C. 4901 *et seq.*);

(15) Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*);

(16) Safe Drinking Water Act (42 U.S.C. 300f *et seq.*);

(17) Toxic Substance Control Act (15 U.S.C. 2601 *et seq.*);

(18) Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*); and

(19) Wilderness Act (16 U.S.C. 1131 *et seq.*)

(b) This section provides a list of environmental laws for informational purposes only and does not create any legal rights or remedies, or imply private rights of action.

§ 1000.1385 What is the typical environmental review process for construction projects?

(a) During the environmental review process, the following activities may occur:

(1) Consult with appropriate Tribal, Federal, state, local officials, and interested parties on potential environmental effects;

(2) Document assessment of potential environmental effects;

(3) Perform necessary environmental surveys and inventories;

(4) Consult with the Advisory Council on Historic Preservation, acting through the SHPO or THPO, to ensure compliance with the NHPA;

(5) Assess whether extraordinary or exceptional circumstances exist that may prevent the project from meeting the criteria for categorical exclusion from further environmental review under NEPA, or if an environmental assessment is required;

(6) Identify methods to avoid or mitigate potential adverse effects; and

(7) Obtain environmental permits and approvals as required.

(b) This section is for informational purposes only and does not create any legal rights or remedies, or imply private rights of action.

§ 1000.1390 Is the Secretary required to take into account the Indigenous Knowledge of Tribes/Consortia when preparing environmental studies under NEPA, NHPA, and related provisions of other law and regulations?

Yes, Council on Environmental Quality (CEQ) regulations direct agencies to make use of any reliable data sources, in carrying out their responsibilities under NEPA. The Secretary recognizes that Tribes/Consortia hold relevant information and perspectives regarding the environment, and Indigenous Knowledge can inform the Secretary's environmental analysis. Similarly, section 106 of NHPA (54 U.S.C. 306108) establishes a process to ensure that the Secretary take into account the effects of a project the Department carries out, licenses, or assists on historic properties.

§ 1000.1395 May a Tribe/Consortium act as a cooperating agency or joint lead agency for environmental review purposes regardless of whether it exercises its option under § 1000.1370(a)(1)?

Yes, consistent with 40 CFR 1501.7(b) and 1501.8, a Tribe/Consortium may act as a cooperating agency or joint lead agency for environmental review purposes under this part. For informational purposes only, the term ''cooperating agency'' is defined at 40 CFR 1508.1(g) and the criteria for a Tribe/Consortium to act as a ''cooperating agency'' are set out in 40 CFR 1501.8 and Department regulations at 43 CFR 46.225, respectively.

§ 1000.1400 How does a Tribe/Consortium comply with NEPA and NHPA?

(a) A Tribe/Consortium complies with NEPA and NHPA by:

(1) Developing and adopting their own environmental review procedures that meet or exceed applicable Federal requirements;

(2) Adopting the procedures of the Secretary; or

(3) Adopting the procedures of another Federal agency.

(b) The Tribe/Consortium shall reference such procedures in the funding agreement or construction project agreement and use such procedures in undertaking the project.

§ 1000.1405 If a Tribe/Consortium adopts the environmental review procedures of a Federal agency, is the Tribe/Consortium responsible for ensuring the agency's policies and procedures meet the requirements of NEPA, NHPA, and related environmental laws?

No, the Federal agency is responsible for ensuring its own policies and procedures meet the requirements of NEPA, NHPA, and related environmental laws, not the Tribe/Consortium.

§ 1000.1410 Are Federal funds available to cover the cost of Tribes/Consortia carrying out environmental responsibilities?

Yes, funds are available:

(a) For project-specific environmental costs through the construction project agreement or funding agreement that includes the construction project; and

(b) For environmental review program costs through a funding agreement and/or a construction project agreement.

§ 1000.1415 How are project and program environmental review costs identified?

(a) The Tribe/Consortium and the Secretary shall work together during the initial stages of project development to identify program and project related costs associated with carrying out environmental responsibilities for proposed projects. The goal in this process is to identify the costs associated with all foreseeable environmental review activities.

(b) If unforeseen environmental review and compliance costs are identified during the performance of the construction project, the Tribe/Consortium or, at the request of the Tribe/Consortium, the Tribe/Consortium and Secretary may do one or more of the following:

(1) Mitigate adverse environmental effects;

(2) Alter the project scope of work; and/or

(3) Add additional program and/or project funding, including seeking supplemental appropriations.

§ 1000.1420 What costs may be included in the budget for a construction project or program?

(a) A Tribe/Consortium may include costs allowed by applicable provisions of subpart E of 2 CFR part 200, and costs allowed under 25 U.S.C. 5367, 25 U.S.C. 5325 and 25 U.S.C. 5324(m). The cost incurred will vary depending on which phase of the construction process the Tribe/Consortium is conducting and type of construction project agreement that will be used.

(b) Regardless of whether a construction project agreement or funding agreement that includes a construction project is fixed priced or cost-reimbursement, budgets may include costs or fees associated with the following:

(1) Construction project proposal preparation;

(2) Conducting community meetings to develop project documents;

(3) Architects, engineers, and other consultants to prepare project planning documents, to develop project plans and specifications, and to assist in oversight of the design during construction;

(4) Real property lease or acquisition;

(5) Development of project surveys including topographical surveys, site boundary descriptions, geotechnical surveys, archeological surveys, and NEPA compliance;

(6) Project management, superintendence, safety, and inspection;

(7) Travel, including local travel incurred as a direct result of conducting the construction project agreement and remote travel in conjunction with the project;

(8) Consultants, such as demographic consultants, planning consultants, attorneys, accountants, and personnel who provide services, to include construction management services;

(9) Project site development;
(10) Project construction cost;
(11) General, administrative overhead, and indirect costs;
(12) Securing and installing moveable equipment, telecommunications and data processing equipment, furnishings, including works of art, and special purpose equipment when part of a construction contract;
(12) Other costs directly related to performing the construction project;
(13) Project Contingency;
(i) A cost-reimbursement project agreement budgets contingency as a broad category. Project contingency remaining at the end of the project is considered savings.
(ii) Fixed-price agreements budget project contingency in the lump sum price or unit price.
(c) In the case of a fixed-price project agreement, a reasonable profit determined by taking into consideration the relevant risks and local market conditions.

§ 1000.1425 May the Secretary reject a Tribe's/Consortium's final offer of a construction project proposal submitted under subpart I—Final Offer based on a determination of Tribal capacity or capability?

No, the Secretary may not reject a Tribe's/Consortium's final offer of a construction project based on a determination of Tribal capacity or capability.

§ 1000.1430 On what basis may the Secretary reject a final offer of a construction project proposal made by a Tribe/Consortium?

As described in subpart I—Final Offer of this part, rejection of a final offer by the Secretary for a construction project must be based on a specific finding by the Secretary that clearly demonstrates, or that is supported by a controlling legal authority, that one or more of the statutory criteria under 25 U.S.C. 5366(c)(6) exist to reject the final offer.

Role of the Secretary

§ 1000.1435 What is the Secretary's role in a construction project performed under this subpart?

The Secretary has the following role regarding a construction program or project contained in a funding agreement or construction project agreement:
(a) On a schedule negotiated by the Secretary and the Tribe/Consortium, to ensure health and safety standards and compliance with Federal law, the Secretary shall review and verify, to the satisfaction of the Secretary:
(1) That project planning and documents prepared by the Tribe/Consortium in advance of initial construction are in conformity with the obligations of the Tribe/Consortium under 25 U.S.C. 5367(d); and
(2) Before the project planning and design documents are implemented, that subsequent document amendments that result in a significant change in construction are in conformity with the obligations of the Tribe/Consortium under 25 U.S.C. 5367(d).
(b) Where no time is otherwise specified in a funding agreement or construction project agreement, the Secretary shall complete the review and verification of project documents required under 25 U.S.C. 5367(h) and provide a Tribe/Consortium a written response within 30 days of the Secretary's receipt from the Tribe/Consortium of project planning and design documents. Absent a written response by the Secretary within the 30-day period, the project planning and design documents, or amendments to such documents, shall be deemed to be conformity with the Tribe's obligations under 25 U.S.C. 5367(d).
(c) The Secretary must approve any proposed changes in the construction project that require;
(1) An increase in the negotiated funding amount; or
(2) An increase in the negotiated performance period; or
(3) A significant departure from the scope or objective of the construction program as agreed to in the funding agreement or construction project agreement.
(d) A Tribe/Consortium may make immaterial changes to the performance period and make budget adjustments within available Federal funding without an amendment to the funding agreement or construction project agreement.
(e) The Secretary may conduct onsite project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Tribe/Consortium. The Secretary must provide the Tribe/Consortium with reasonable advance written notice to assist the Tribe/Consortium in coordinating the visit. The purpose of the visit is to review the progress under the construction project agreement or funding agreement. At the request of the Tribe/Consortium, the Secretary must provide the Tribe/Consortium a written site visit report;
(f) Where the Secretary and the Tribe/Consortium share construction project or program activities, the Secretary and Tribe/Consortium shall provide for the exchange of information;
(g) The Secretary may reassume the construction portion of a funding agreement or construction project agreement if the Secretary, in accordance with subpart M of this part, makes a written finding of:
(1) A significant failure to substantially carry out the terms of the funding agreement or construction agreement without good cause; or
(2) Imminent jeopardy to a physical trust asset, to a natural resource, or that adversely affects public health and safety as provided in subpart M of this part.

§ 1000.1440 What constitutes a "significant change" in the original scope of work?

A significant change in the original scope of work is:
(a) A change that would result in a cost that exceeds the total of the Federal project funds available and the Tribe's/Consortium's contingency funds; or
(b) A material departure from the original scope of work, including substantial departure from timelines negotiated in the construction project agreement.

§ 1000.1445 May the Secretary suspend construction activities under a funding agreement or construction project agreement?

(a) The Secretary may, in lieu of reassumption under subpart M of this part, allow a Tribe/Consortium to suspend certain work under a construction portion of a funding agreement or construction project agreement for up to 30 days only if the Secretary notifies the Tribe/Consortium in writing that the Secretary has found that:
(1) Site conditions adversely affect health and safety; or
(2) Work in progress or completed for the construction project fails to substantially carry out the terms of the construction project agreement or funding agreement without good cause.
(b) The Secretary may suspend only work directly related to the criteria specified in paragraph (a) of this section unless other reasons for suspension are specifically negotiated in the funding agreement or construction project agreement.
(c) Unless the Secretary determines that a health and safety emergency requiring immediate reassumption under subpart M of this part exists, before requesting a suspension of work on the project by the Tribe/Consortium, the Secretary must provide:
(1) A 5-working days written notice to the Tribe/Consortium specifying the reasons the Secretary requests a suspension of certain project work; and
(2) A reasonable opportunity for the Tribe/Consortium to correct the problem.

(d) The Tribe/Consortium must be compensated for reasonable costs due to any suspension of work that occurred through no fault of the Tribe/Consortium. Project funds will not be used for this purpose. However, if suspension occurs due to the action or inaction of the Tribe/Consortium, then project funds will be used to cover suspension related activities.

§ 1000.1450 How are property and funding returned if there is a reassumption for substantial failure to carry out a construction project?

If there is a reassumption by the Secretary of a project for substantial failure to carry out the funding agreement or construction project agreement, property and funding will be returned as provided in subparts M and N of this part.

§ 1000.1455 What happens when a Tribe/Consortium, suspended under § 1000.1445 for substantial failure to carry out the terms of construction project agreement or funding agreement that includes a construction project or program without good cause, does not correct the failure during the suspension?

Except when the Secretary makes a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety, requiring immediate reassumption as provided in subpart M of this part, a finding by the Secretary of substantial failure to carry out the terms of the construction project agreement or funding agreement that includes a construction project or program without good cause is not corrected or resolved by the Tribe/Consortium during the suspension of work, the Secretary may initiate a reassumption at the end of the 30-day suspension of work if an extension has not been negotiated. Any unresolved dispute will be processed in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 7101, *et seq.*

§ 1000.1460 How does the Secretary make advance payments to a Tribe/Consortium under a funding agreement or construction project agreement?

(a) For all construction projects performed under a funding agreement or construction project agreement, advance payments shall be made annually or semiannually, at the Tribe's/Consortium's option as provided in 25 U.S.C. 5367(f). The initial payment shall include all contingency funding for the project or phase of the project to the extent that there are funds appropriated for that purpose.

(b) The amount of subsequent advance payments is based on the mutually agreeable project schedule reflecting:

(1) Work to be accomplished within the advance payment period;

(2) Work already accomplished; and

(3) Total prior payments for each annual or semiannual advance payment period.

(c) For lump sum, fixed price agreements, at the request of the Tribe/Consortium, payments shall be based on an advance payment period measured as follows:

(1) One year; or

(2) Project Phase (*e.g.,* planning, design, construction). If project phase is chosen by the Tribe/Consortium as the payment period, the full amount of funds necessary to perform the work for that phase of the construction project agreement is payable in the initial advance payment. For multi-phase projects, the planning and design phases must be completed prior to the transfer of funds by the Secretary for the associated construction phase. The completion of the planning and design phases will include at least one opportunity for Secretarial approval in accordance with § 1000.1435.

(d) For construction project agreements, the amount of advance payments shall include the funds necessary to perform the work identified in the advance payment period of one year.

(e) Any agreement to advance funds under paragraphs (b), (c) or (d) of this section is subject to the availability of appropriations.

(f) Initial advance payments are due within 10 days of the effective date of the funding agreement or construction project agreement, and subsequent advance payments are due:

(1) Within 10 days of apportionment for annual payments, or

(2) Within 10 days of the start date of the project phase for phase payments.

§ 1000.1465 Is a facility built under this subpart eligible for annual operation and maintenance funding?

Yes, upon completion of a facility constructed under the Act, the Secretary shall include the facility among those eligible for annual operation and maintenance funding support comparable to that provided for similar facilities funded by the Department as annual appropriations are available and to the extent that the facility size and complexity and other factors do not exceed the funding formula criteria for comparable buildings.

Role of the Tribe/Consortium

§ 1000.1470 What is the Tribe's/Consortium's role in a construction project included in a funding agreement or construction project agreement under this subpart?

(a) In carrying out a construction project under the Act, a Tribe/Consortium shall assume responsibility for the completion of the construction project and of a facility that is usable for the purpose for which the Tribe/Consortium received funding, including day-to-day on-site management and administration of the project, in accordance with the negotiated funding agreement or construction project agreement. However, Tribes/Consortia are not required to perform beyond the amount of funds provided. For example, a Tribe/Consortium may encounter unforeseen circumstances during the term of a funding agreement or construction project agreement. If this occurs, options available to the Tribe/Consortium include, but are not limited to:

(1) Reallocating existing funding;

(2) Reducing/revising the scope of work that does not require an amendment because it does not result in a significant change;

(3) Utilizing savings;

(4) Requesting additional funds or appropriations;

(5) Utilizing interest earnings;

(6) Seeking funds from other sources; and/or

(7) Redesigning or re-scoping that does not result in a significant change by amendment as provided in the funding agreement the construction project agreement.

(b) The Tribe/Consortium must give the Secretary timely notice of any proposed changes to the project that require an increase to the negotiated funding amount or an increase in the negotiated performance period or any other significant departure from the scope or objective of the project. The Tribe/Consortium and Secretary may negotiate to include timely notice requirements in the funding agreement or construction project agreement.

§ 1000.1475 Is a Tribe/Consortium required to submit construction project progress and financial reports for construction projects?

Yes, as required under § 1000.1355(b), construction project progress reports and financial reports are only required for active construction projects. The construction progress and financial reports shall provide the following information:

(a) Construction project progress reports contain information about

accomplishments during the reporting period and issues and concerns of the Tribe/Consortium relating to the project, if any. Construction progress information will include the following, as applicable:

(1) Phase(s) of the project completed or in progress including but not limited to design complete, environmental review complete, and construction underway;

(2) Milestone project event(s) reached (*e.g.,* 50% of the project is completed);

(3) Other information mutually agreeable to the Tribe/Consortium and the Secretary.

(4) Upon project completion, the final construction progress report will provide notification to the Secretary that the project has been completed in accordance with the approved project scope, including any changes in the project scope of work.

(b) Construction project financial reports contain information regarding the amount of funds expended during the reporting period and financial concerns of the Tribe/Consortium concerning the project, if any.

Other

§ 1000.1480 May a Tribe/Consortium continue work with construction funds remaining in a funding agreement or construction project agreement at the end of the funding year?

Yes, any funds remaining in a funding agreement or construction project agreement for a project at the end of the funding year may be spent for construction under the terms of the funding agreement or construction project agreement for which the funds were awarded.

§ 1000.1485 Must a construction project agreement or funding agreement that contains a construction project or activity incorporate provisions of Federal construction standards?

(a) No, the Secretary may, however, provide information about Federal standards as early as possible in the construction process.

(b) If Tribal construction codes and standards (including national, regional, State, or Tribal building codes or construction industry standards), including health and safety, meet or exceed applicable Federal codes and standards, then the Secretary must accept the Tribe's/Consortium's proposed codes and standards.

(c) The Secretary may also accept commonly accepted industry construction codes and standards; provided that such codes and standards meet or exceed otherwise applicable Federal standards for the construction project.

§ 1000.1490 May the Secretary require design provisions and other terms and conditions for construction projects or programs included in a funding agreement or construction project agreement under section 403(c) (25 U.S.C. 5363(c))?

Yes, the relevant bureau may provide to the Tribe/Consortium project design criteria and other terms and conditions that are required for such a construction project or program. The construction project or program must be completed in accordance with the terms and conditions set forth in the funding agreement or construction project agreement.

§ 1000.1495 Do all provisions of other subparts apply to construction portions of a funding agreement or construction project agreement?

Yes, all provisions of other subparts apply to construction portions of a funding agreement or construction project agreement unless those provisions are inconsistent with this subpart.

§ 1000.1500 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Under § 1000.235, a Tribe may withdraw from a Consortium and request its portion of a construction project's funds. The Secretary may decide not to award these funds if the award will affect the Consortium's ability to complete a non-severable phase of the project within available funding. A non-severable phase of a project would include but is not limited to the construction of a single building serving a Consortium. A severable phase of a project would include but is not limited to the funding for a road in one village where the Consortium would be able to complete the roads in the other villages that were part of the project approved initially in the funding agreement. The Secretary's decision under this section may be appealed under subpart R of this part.

§ 1000.1505 May a Tribe/Consortium reallocate funds from a construction program to a non-construction program?

No, a Tribe/Consortium may not reallocate funds from a construction program to a non-construction program unless otherwise provided under the relevant appropriation acts.

§ 1000.1510 May a Tribe/Consortium reallocate funds among construction programs?

Yes, a Tribe/Consortium may reallocate funds among construction programs if permitted by appropriations law or if approved in advance by the Secretary.

§ 1000.1515 Must the Secretary retain project funds to ensure proper health and safety standards in construction projects?

Yes, the Secretary must retain project funds to ensure proper health and safety standards in construction projects. Examples of purposes for which bureaus may retain funds include:

(a) Determining or approving appropriate construction standards to be used in funding agreements;

(b) Verifying that there is an adequate Tribal inspection system utilizing licensed professionals;

(c) Providing for sufficient monitoring of design and construction by the Secretary; and

(d) Requiring corrective action during performance when appropriate.

§ 1000.1520 What funding must the Secretary provide in a construction project agreement or funding agreement that includes a construction project or program?

The Secretary must provide funding for a construction project agreement or funding agreement that includes a construction project or program in accordance with 25 U.S.C. 5325 and 25 U.S.C. 5363(g)(3).

§ 1000.1525 Must Federal funds from other DOI sources be incorporated into a construction project agreement or funding agreement that includes a construction project or program?

Yes, at the request of the Tribe/Consortium, the Secretary must include Federal funds from other DOI sources as permitted by law, whether on an ongoing or a one-time basis.

§ 1000.1530 May a Tribe/Consortium contribute funding to a project?

Yes, at the discretion of a Tribe/Consortium, a Tribe/Consortium may contribute funds to a construction project.

Subpart L—Federal Tort Claims

§ 1000.1601 What is the purpose of this subpart?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This section covers:

(a) Coverage of claims arising out of the performance under compacts and funding agreements;

(b) Procedures for filing claims under FTCA; and

(c) Procedures for a Tribe/Consortium to cooperate with the Federal Government in connection with tort claims arising out of the Tribe's/Consortium's performance of a compact or funding agreement under this part.

§ 1000.1605 What other statutes and regulations apply to FTCA coverage?

A number of other statutes and regulations apply to FTCA coverage, including the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671 through 2680), 25 U.S.C. 5376, and related U.S. Department of Justice regulations in 28 CFR part 14.

§ 1000.1610 Do Tribes/Consortia need to be aware of areas which FTCA does not cover?

Yes, there are claims against Tribes/Consortia which are not covered by FTCA, claims which may not be pursued under FTCA, and remedies that are excluded by FTCA. The following general guidance is not intended as a definitive description of coverage, which is subject to review by the U.S. Department of Justice and the courts on a case-by-case basis.

(a) *What claims are expressly barred by FTCA and therefore may not be made against the United States, a Tribe, or Consortium?* Any claim under 28 U.S.C. 2680, including claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) *What claims may not be pursued under FTCA?*

(1) Claims against subcontractors arising out of the performance of subcontracts with a Tribe/Consortium;

(2) Claims for on-the-job injuries which are covered by workmen's compensation;

(3) Claims for breach of contract rather than tort claims; or

(4) Claims resulting from activities performed by an employee which are outside the scope of employment.

(c) What remedies are expressly excluded by FTCA and therefore are barred?

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674; and

(2) Other remedies not permitted under applicable state law.

§ 1000.1615 Is there a deadline for filing FTCA claims?

Yes, claims shall be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 1000.1620 How long does the Federal Government have to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?

The Federal Government has 6 months to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed.

§ 1000.1625 Is it necessary for a compact or funding agreement to include any clauses about FTCA coverage?

No, clauses about FTCA coverage are optional. At the request of Tribes/Consortia, a compact or funding agreement shall include the following clause to clarify the scope of FTCA coverage:

For purposes of FTCA coverage, the Tribe/Consortium and its employees (including individuals performing personal services contracts with the Tribe/Consortium) are deemed to be employees of the Federal Government while performing work under the compact or funding agreement. This status is not changed by the source of the funds used by the Tribe/Consortium to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Tribe/Consortium.

§ 1000.1630 Does FTCA apply to a compact and funding agreement if FTCA is not referenced in the compact or funding agreement?

Yes. In accordance with 25 U.S.C. 5376, FTCA applies to a compact or funding agreement even if the compact or funding agreement does not mention it.

§ 1000.1635 To what extent shall the Tribe/Consortium cooperate with the Federal Government in connection with tort claims arising out of the Tribe's/Consortium's performance of a compact, funding agreement, or subcontract?

(a) The Tribe/Consortium shall designate in writing to the Secretary an individual to serve as tort claims liaison with the Federal Government.

(b) As part of the notification required by 28 U.S.C. 2679(c), the Tribe/Consortium shall notify the Secretary immediately in writing of any tort claim (including any proceeding before an administrative agency or court) filed against the Tribe/Consortium or any of its employees that relates to performance of a compact, funding agreement, or subcontract.

(c) The Tribe/Consortium, through its designated tort claims liaison, shall assist the appropriate Federal agency in preparing a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of Tribal and/or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State, or Tribal law, ordinance, or regulation;

(7) The Tribe's/Consortium's determination as to whether any of its employees (including Federal employees assigned to the Tribe/Consortium) involved in the incident giving rise to the tort claim were acting within the scope of their employment in the performance of the compact or funding agreement at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats and photographs of the site or damaged property, such as may be necessary or useful for purposes of claim determination by the Federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The Tribe/Consortium shall cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the Tribe/Consortium shall make an assignment and subrogation of all the Tribe's/Consortium's rights and claims (except those against the Federal Government) arising out of a tort claim against the Tribe/Consortium.

(f) If requested by the Secretary, the Tribe/Consortium shall authorize representatives of the Secretary to settle or defend any claim and to represent the Tribe/Consortium in or take charge of any action.

(g) If the Federal Government undertakes the settlement or defense of any claim or action, the Tribe/Consortium shall provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 1000.1640 Does this coverage extend to subcontractors of compacts and funding agreements?

No, subcontractors or subgrantees providing services to a Public Law 93–

638 Tribe/Consortium are generally not covered.

§ 1000.1645 Is FTCA the exclusive remedy for a tort claim, including a claim concerning personal injury or death, resulting from the performance of a compact or funding agreement?

Yes, except as explained in § 1000.1610(b). No claim may be filed against a Tribe/Consortium or employee based upon performance of a compact or funding agreement. All claims shall be filed against the United States and are subject to the limitations and restrictions of FTCA.

§ 1000.1650 What employees are covered by FTCA for claims arising out of a Tribe's/Consortia's performance of a compact or funding agreement?

The following employees are covered by FTCA for claims:

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in the performance of a compact or funding agreement; and;

(d) Federal employees assigned to a Tribe/Consortium under the compact or funding agreement including those under the Intergovernmental Personnel Act.

§ 1000.1655 Does FTCA cover employees of the Tribe/Consortium who are paid by the Tribe/Consortium from funds other than those provided through the funding agreement?

Yes, FTCA covers employees of the Tribe/Consortium who are not paid from funds transferred under a funding agreement as long as the services out of which the claim arose were performed under the compact or funding agreement.

§ 1000.1660 May persons who are not Indians or Alaska Natives assert claims under FTCA arising out of the performance of a compact or funding agreement by a Tribe/Consortium?

Yes, any person(s) may assert tort claims under FTCA arising out of the performance of a compact or funding agreement by Tribes/Consortia under this subpart.

§ 1000.1665 If the Tribe/Consortium or Tribe's/Consortium's employee receives a summons and/or a complaint alleging a tort covered by FTCA and arising out of the performance of a compact or funding agreement, what should the Tribe/Consortium do?

As part of the notification required by 28 U.S.C. 2679(c), if the Tribe/Consortium or Tribe's/Consortium's employee receives a summons and/or complaint alleging a tort covered by FTCA and arising out the performance of a compact or funding agreement, the Tribe/Consortium should immediately:

(a) Inform the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW, Washington, DC 20240.

(b) Inform the Tribe's/Consortium's tort claims liaison, and

(c) Forward all of the materials identified in § 1000.1635(c) to the contacts given in § 1000.1665(a) and (b).

Subpart M—Reassumption

§ 1000.1701 What is the purpose of this subpart?

This subpart explains when the Secretary can reassume a program without the consent of a Tribe/Consortium.

§ 1000.1705 What does reassumption mean?

Reassumption means the Secretary, without consent of the Tribe/Consortium, takes control or operation of the PSFAs and associated funding in a compact or funding agreement, in whole or in part, and assumes the responsibility to provide such PSFAs.

§ 1000.1710 Under what circumstances may the Secretary reassume a program operated by a Tribe/Consortium under a funding agreement?

The Secretary may reassume a program and the associated funding if the Secretary makes a specific finding relating to that program of:

(a) Imminent jeopardy to a trust asset, a natural resource, or public health and safety that:

(1) Is caused by an act or omission of the Tribe/Consortium; and

(2) Arises out of a failure to carry out the compact or funding agreement; or

(b) Gross mismanagement with respect to funds transferred to a Tribe/Consortium under a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

§ 1000.1715 What is "imminent jeopardy" to a trust asset?

Imminent jeopardy means an immediate threat and likelihood of significant devaluation, degradation, damage, or loss of a trust asset, or the intended benefit from the asset caused by the actions or inactions of a Tribe/Consortium in performing trust functions. This includes disregarding Federal trust standards and/or Federal law while performing trust functions if the disregard creates such an immediate threat.

§ 1000.1720 What is "imminent jeopardy" to natural resources?

The standard for natural resources is the same as for a physical trust asset, except that a review for compliance with the specific mandatory statutory provisions related to the program as reflected in the funding agreement must also be considered.

§ 1000.1725 What is "imminent jeopardy" to public health and safety?

Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by Tribal/Consortium action or inaction or as otherwise provided in a funding agreement.

§ 1000.1730 What steps must the Secretary take prior to reassumption becoming effective?

Except as provided in § 1000.1750 for immediate reassumption, prior to a reassumption becoming effective, the Secretary must:

(a) Notify the Tribe/Consortium in writing of the details of the findings required under § 1000.1710;

(b) Request specific corrective action to remedy the mismanagement of the funds or programs within a reasonable period of time which in no case may be less than 45 days;

(c) Offer and provide, if requested, the necessary technical assistance and advice to assist the Tribe/Consortium overcome the conditions that led to the findings described under (a); and

(d) Provide the Tribe/Consortium with a hearing on the record as provided under subpart R of this part.

§ 1000.1735 Does the Tribe/Consortium have a right to a hearing prior to a non-immediate reassumption becoming effective?

Yes, at the request of the Tribe/Consortium, the Secretary must provide a hearing on the record prior to or in lieu of the corrective action period identified in § 1000.1730(b).

§ 1000.1740 What happens if the Secretary determines that the Tribe/Consortium has not corrected the conditions that the Secretary identified in the written notice?

(a) The Secretary shall provide a second written notice to the Tribe/Consortium served by the compact or funding agreement that the compact or funding agreement will be rescinded, in whole or in part.

(b) The second notice shall include:

(1) The intended effective date of the Secretary's reassumption;

(2) The details and facts supporting the intended reassumption; and

(3) Instructions that explain the Tribe/Consortium's right to a formal hearing within 30 days of receipt of the notice.

§ 1000.1745 What is the earliest date on which a reassumption by the Secretary can be effective?

Except as provided in § 1000.1750, no program may be reassumed by the Secretary until 30 days after the final resolution of the hearing and any subsequent appeals to provide the Tribe/Consortium with an opportunity to take corrective action in response to any adverse final ruling.

§ 1000.1750 Does the Secretary have the authority to immediately reassume a program?

Yes, the Secretary may immediately reassume operation of a program and associated funding upon providing to the Tribe/Consortium written notice in which the Secretary makes a finding of:

(a) Imminent and substantial jeopardy and irreparable harm to a trust asset, a natural resource, or public health and safety that:

(1) Is caused by an act or omission by the Tribe/Consortium; and

(2) Arises out of a failure to carry out the terms of an applicable compact or funding agreement.

(b) If the Secretary reassumes operation of a program under this provision, the Secretary must provide the Tribe/Consortium with a hearing on the record not later than 10 days after the date of reassumption.

§ 1000.1755 What must a Tribe/Consortium do when a program is reassumed?

On the effective date of reassumption, the Tribe/Consortium must, at the request of the Secretary, deliver all property and equipment, and title thereto:

(a) That the Tribe/Consortium received for the program under the funding agreement; and

(b) That has a per item value in excess of $5,000, or as otherwise provided in the funding agreement.

§ 1000.1760 When must the Tribe/Consortium return funds to the Department?

The Tribe/Consortium must return unexpended funds, less ''wind up costs,'' that remain available to the Department as soon as practical after the effective date of the reassumption.

§ 1000.1765 May the Tribe/Consortium be reimbursed for actual and reasonable ''wind up costs'' incurred after the effective date of retrocession?

Yes, the Tribe/Consortium may be reimbursed for actual and reasonable ''wind up costs'' to the extent that funds are available.

§ 1000.1770 Is a Tribe's/Consortium's general right to negotiate a funding agreement adversely affected by a reassumption action?

A reassumption action taken by the Secretary does not affect the Tribe/Consortium's ability to negotiate a funding agreement for programs not affected by the reassumption.

§ 1000.1775 When will the Secretary return management of a reassumed program?

A reassumed program may be included in future funding agreements, but the Secretary may include conditions in the terms of the funding agreement to ensure that the circumstances that caused jeopardy to attach do not reoccur.

Subpart N—Retrocession

§ 1000.1801 What is the purpose of this subpart?

This subpart explains what happens when a Tribe/Consortium fully or partially and voluntarily returns a program to a bureau before the expiration of the term of the compact or funding agreement.

§ 1000.1805 Is a decision by a Tribe/Consortium not to include a program in a successor agreement considered a retrocession?

No, a decision by a Tribe/Consortium not to include a program in a successor agreement is not considered a retrocession.

§ 1000.1810 Who may retrocede a program in a funding agreement?

A Tribe/Consortium may retrocede a program. However, the right of a Consortium member to retrocede may be subject to the terms of the agreement among the members of the Consortium and §§ 1000.205 through 1000.235.

§ 1000.1815 How does a Tribe/Consortium retrocede a program?

The Tribe/Consortium must submit:

(a) A written notice to:

(1) The Office of Self-Governance for BIA programs; or

(2) The appropriate bureau for non-BIA programs; and

(b) A Tribal resolution or other official action of its governing body.

§ 1000.1820 When will the retrocession become effective?

The retrocession becomes effective on the date that is mutually agreed to by the parties in writing. In the absence of a mutually agreed upon effective date, the retrocession becomes effective on the earlier of:

(a) One year after the date the Tribe/Consortium submits its notice of retrocession; or

(b) The date the funding agreement expires.

§ 1000.1825 How will retrocession affect the Tribe's/Consortium's existing and future funding agreements?

Retrocession does not affect other parts of the funding agreement or funding agreements with other bureaus. A Tribe/Consortium may request to negotiate for and include retroceded programs in future funding agreements or through a self-determination contract.

§ 1000.1830 Does the Tribe/Consortium have to return funds used in the operation of a retroceded program?

The Tribe/Consortium and the Secretary must negotiate the amount of funds that have not been obligated by the Tribe/Consortium to be returned to the Secretary, less close out costs, for the Secretary's operation of the retroceded program. This amount must be based on such factors as the time remaining or functions remaining in the funding cycle or as provided in the funding agreement.

§ 1000.1835 Does the Tribe/Consortium have to return property used in the operation of a retroceded program?

On the effective date of any retrocession, the Tribe/Consortium must, at the option of the Secretary, return all property and equipment, and title thereto:

(a) That was acquired with funds under the funding agreement for the program being retroceded; and

(b) That has a per item current fair market value in excess of $5,000 at the time of the retrocession, or as otherwise provided in the funding agreement.

§ 1000.1840 What happens to a Tribe's/Consortium's mature contract status if it has retroceded a program that is also available for self-determination contracting?

If a Tribe/Consortium retrocedes operation of a program carried out under a title IV funding agreement, at the option of the Tribe/Consortium, the resulting self-determination contract is considered mature if the Tribe/Consortium meets the requirements of 25 U.S.C. 5304(h).

§ 1000.1845 How does retrocession affect a bureau's operation of the retroceded program?

The level of operation of the program will depend upon the amount of funding that is returned with the retrocession.

Subpart O—Trust Evaluation

§ 1000.1901 What is the purpose of this subpart?

This subpart describes how the trust responsibility of the United States is legally maintained through a system of trust evaluations when Tribes/Consortia perform trust PSFAs through funding agreements under the Act. It describes the principles and processes upon which trust evaluations by the Secretary will be based.

§ 1000.1905 Does the Act alter the trust responsibility of the United States to Indian Tribes and individuals under self-governance?

No, the Act does, however, permit a Tribe/Consortium to assume management responsibilities for trust assets and resources on its own behalf and on behalf of individual Indians. Under the Act, the Secretary has a trust responsibility to conduct annual trust evaluations of a Tribe's/Consortium's performance of trust PSFAs under a funding agreement to ensure that Tribal and individual trust assets and resources are managed in accordance with the legal principles and standards governing the performance of trust PSFAs set out in the funding agreement or as provided for by law.

§ 1000.1910 What are ''trust resources'' for the purposes of the trust evaluation process?

(a) Trust resources include property and interests in property:

(1) That are held in trust by the United States for the benefit of a Tribe or individual Indians; or

(2) That are subject to restrictions upon alienation.

(b) Trust assets include:

(1) Other assets, trust revenue, royalties, or rental, including natural resources, land, water, minerals, funds, property, or claims, and any intangible right or interest in any of the foregoing;

(2) Any other property, asset, or interest therein, or treaty right for which the United States is charged with a trust responsibility. For example, water rights and off-reservation treaty rights.

(c) This definition defines trust resources and trust assets for purposes of the trust evaluation process only.

§ 1000.1915 What are ''trust PSFAs'' for the purposes of the trust evaluation process?

Trust PSFAs are those programs, services, functions and activities necessary to the management of assets and resources held in trust by the United States for an Indian Tribe or individual Indian.

§ 1000.1920 Can a Tribe/Consortium request the Secretary to conduct an assessment of the status of the trust assets, resource, and PSFAs?

If the parties agree in writing and it is practical, the Secretary may arrange for a written assessment by the Department of the status of the trust resource and asset at the time of the transfer of the PSFAs or at a later time. The parties shall agree upon an estimate of time required to complete a baseline assessment. Upon completion of the assessment report by the Department, the Secretary's designated representative shall provide a copy of the assessment to the Tribe/Consortium within 30 days.

Annual Trust Evaluation

§ 1000.1925 What is a trust evaluation?

A trust evaluation is an annual review and evaluation of trust functions performed by a Tribe/Consortium to ensure that the functions are performed in accordance with trust standards as defined by Federal law. Trust evaluations address trust functions performed by the Tribe/Consortium on its own behalf as well as trust functions performed by the Tribe/Consortium for the benefit of individual Indians or Alaska Natives.

§ 1000.1930 How are trust evaluations conducted?

(a) Each year the Secretary's designated representative(s) will conduct an evaluation of trust PSFAs for each funding agreement. The Secretary's designated representative(s) will coordinate in writing with the leadership of the Tribe/Consortium, with a copy to the designated Tribe's/Consortium's representative(s), to arrange the evaluation of trust PSFAs and throughout the trust evaluation, including the written report required by § 1000.1940.

(b) This section describes the general framework for trust evaluations. However, each Tribe/Consortium may develop, with the appropriate bureau, an individualized trust evaluation method to allow for the Tribe's/Consortium's unique history, circumstances, trust resources and assets, and the terms and conditions of its funding agreement. An individualized trust evaluation must, at a minimum, contain the measures in paragraph (d) of this section.

(c) To facilitate the trust evaluation so as to mitigate costs and maximize efficiency, each Tribe/Consortium must provide access to all records, plans, and other pertinent documents relevant to the trust PSFAs under review not otherwise available to the Department.

(d) The Secretary's designated representative(s) will:

(1) Review trust transactions;

(2) Conduct on-site inspections of trust resources and assets, as appropriate, at a time to be coordinated between the parties;

(3) Review compliance with applicable statutory and regulatory requirements;

(4) Review compliance with the trust provisions and standards as may be negotiated and included in the funding agreement;

(5) Ensure that the same level of trust services is provided to individual Indians as would have been provided by the Secretary;

(6) Document deficiencies in the performance of trust PSFAs discovered during the trust evaluation in the final report which the Department will submit to the Tribe/Consortium pursuant to § 1000.1940; and

(7) Ensure the fulfillment of the Secretary's trust responsibility to Tribes and individual Indians by documenting the existence of:

(i) Systems of internal controls;

(ii) Trust standards; and

(iii) Safeguards against conflicts of interest in the performance of trust PSFAs.

§ 1000.1935 May the trust evaluation process be used for additional reviews?

Yes, if the parties agree in writing to such additional reviews.

§ 1000.1936 May the parties negotiate review methods for purposes of the trust evaluation?

Yes, unless review methods are otherwise provided by Federal law, the Secretary's designated representative will negotiate review methods at the request of the Tribe/Consortium for inclusion in a funding agreement as provided in § 1000.1930(b).

§ 1000.1940 What are the responsibilities of the Secretary's designated representative(s) after the annual trust evaluation?

The Secretary's representative(s) must prepare a written report documenting the results of the trust evaluation within 60 days of the Department's completion of an on-site and/or desk review.

(a) The Secretary's representative(s) will provide the Tribe/Consortium representative(s) with a copy of the report for review and comment before finalization.

(b) The Secretary's representative(s) will attach to the report any Tribal/Consortium comments that the representative receives.

(c) The Secretary's representative(s) must respond to the Tribe's/

Consortium's comments as part of the final trust evaluation report.

§ 1000.1945 Is the trust evaluation standard or process different when the trust resource or asset is held in trust for an individual Indian or Indian allottee?

No, Tribes/Consortia are under the same obligation as the Secretary to perform trust PSFAs and related activities in accordance with trust protection standards and principles whether managing Tribally or individually owned trust resources and assets. The Department's process for conducting the annual evaluation of Tribal/Consortium performance of trust PSFAs on behalf of individual Indians is the same as that used in evaluating performance of Tribal trust PSFAs.

§ 1000.1950 Does the annual trust review evaluation include a review of the Secretary's inherent Federal and retained operation trust PSFAs?

When the annual trust evaluation by the Secretary reveals a deficient performance of trust PSFAs by a Tribe/Consortium due in part to the action or inaction of a bureau, it will trigger an evaluation by the Department of the Secretary's inherent Federal functions and any retained trust PSFAs pertaining to the bureau's action or inaction.

The appropriate Department officials will be notified in writing by the Secretary's representative of the need for corrective action. A copy of such written notice shall be sent by the Secretary's representative to the Tribe/Consortium. The review of the Secretary's trust PSFAs shall be based on the standards in Federal law.

§ 1000.1955 What are the consequences of a finding of imminent jeopardy in the Secretary's annual trust evaluation?

(a) A finding of imminent jeopardy to a trust asset, natural resource, or public health and safety that is caused by an act or omission of the Tribe/Consortium and that arises out of a failure by the Tribe/Consortium to carry out the compact or funding agreement, triggers the Federal reassumption process (*see* subpart M of this part), unless the conditions in paragraph (b) of this section are met.

(b) The reassumption process will not be triggered if the Secretary's designated representative determines that the Tribe/Consortium:

(1) Can cure the conditions causing jeopardy within 60 days; and

(2) Will not cause significant loss, harm, or devaluation of a trust asset, natural resources, or the public health and safety.

§ 1000.1960 What if the Secretary's trust evaluation reveals problems that do not rise to the level of imminent jeopardy?

Where problems not rising to the level of imminent jeopardy are caused by Tribal/Consortium action or inaction, the conditions must be:

(a) Documented in the Department's annual trust evaluation report;

(b) Reported to the Secretary; and

(c) Reported in writing to:

(1) The governing body of the Tribe; and

(2) In the case of a Consortium, to the governing body of each Tribe on whose behalf the Consortium is performing the trust PSFAs.

§ 1000.1965 Who is responsible for taking corrective action?

The Tribe/Consortium is primarily responsible for identifying and implementing corrective actions for matters contained in the funding agreement, but the Department may also suggest possible corrective measures for Tribal/Consortium consideration.

§ 1000.1970 What are the requirements of the Department's review team report?

A report summarizing the results of the trust evaluation will be prepared by the Secretary's designated representative(s) and copies provided to the Tribe/Consortium within the time frame specified in § 1000.1940. The annual trust evaluation report must:

(a) Be written objectively, concisely, and clearly;

(b) Present information accurately and fairly, including only relevant and adequately supported information, findings, and conclusions; and

(c) Include a written response from the Tribe/Consortium to the draft report provided to the Tribe/Consortium by the Secretary's representative(s).

§ 1000.1975 May the Department conduct more than one trust evaluation per Tribe per year?

(a) Yes, if the Department receives information that it concludes rises to the level of a threat of imminent jeopardy to a trust asset, natural resource, or the public health and safety, caused by an act or omission of a Tribe/Consortium and arises out of a failure to carry out a compact or funding agreement, the Department, as trustee, may conduct a preliminary investigation. The Department:

(1) Shall promptly contract the Tribe/Consortium to discuss the nature of the threat;

(2) Will follow up with notification to the Tribe/Consortium in writing, and

(3) May conduct an on-site inspection upon 2 days' advance written notice to the Tribe/Consortium.

(b) If the preliminary investigation shows that appropriate, sufficient data are present to indicate there may be imminent jeopardy, the Secretary's designated representative shall follow the reassumption procedures in accordance with subpart M of this part.

Subpart P—Reports

§ 1000.2001 What is the purpose of this subpart?

This subpart describes what reports are developed under self-governance by the Secretary and the Tribes/Consortia.

§ 1000.2005 Is the Secretary required to report on self governance?

Yes, on January 1 of each year, the Secretary will submit a report on self-governance to the Congress. The report will be based on:

(a) Information contained in funding agreements;

(b) Annual audit reports, and

(c) Data of the Secretary regarding the disposition of Federal funds.

§ 1000.2010 What will the Secretary's annual report to Congress contain?

The Secretary's report will:

(a) Identify:

(1) The relative costs and benefits of self-governance;

(2) With particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian Tribes and members of Indian Tribes;

(3) The funds transferred to each Tribe/Consortium and the corresponding reduction in the Federal employees and workload; and

(4) The funding formula for individual Tribal shares of all Central Office funds, together with the comments of affected Indian Tribes, developed for the report to Congress as required by 25 U.S.C. 5372(d).

(b) Include the separate views and comments of each Indian Tribe or Tribal organization; and

(c) Include a list of:

(1) All such programs that the Secretary determines, in consultation with Indian Tribes participating in self-governance, are eligible for negotiation to be included in a funding agreement at the request of a participating Indian Tribe;

(2) All such programs which Indian Tribes have formally requested to include in a funding agreement under section 403(c) (25 U.S.C. 5363(c)) due to the special geographic, historical, or cultural significance of the program to the Indian Tribe, indicating whether each request was granted or denied, and stating the grounds for any denial; and

(d) Include in this report, in the aggregate, a description of the internal controls that were inadequate, the technical assistance provided, and a description of Secretarial actions taken to address any remaining inadequate internal controls after the provision of technical assistance and implementation of the plan required by 25 U.S.C. 5324(q)(1).

(e) Programmatic targets established by the Secretary, after consulting with participating Tribes/Consortia, to encourage bureaus of the Department, other than the BIA, the BIE, the BTFA, or the Office of Assistant Secretary for Indian Affairs to ensure that an appropriate portion of those programs are available to be included in funding agreements.

§ 1000.2011 Is the Secretary required to review programs of the Department other than BIA, BIE, the Office of the Assistant Secretary for Indian Affairs, and the BTFA?

Yes. In order to optimize opportunities for including non-BIA programs in agreements with Tribes/Consortia participating in self-governance under the Act, the Secretary shall review all non-BIA programs without regard to the agency or office concerned.

§ 1000.2012 Is the Secretary required to annually publish information under this subpart in the Federal Register?

Yes, the Secretary shall annually review and publish in the **Federal Register**, after consulting with Tribes/Consortia participating in self-governance, revised lists under § 1000.2010(c)(1) and (2) and programmatic targets under § 1000.2010(e), and make such information available to all participating Tribes/Consortia.

§ 1000.2015 Must the Secretary seek comment on the report from Tribes/Consortia before submitting it to Congress?

Yes, before the report of the Secretary is submitted to Congress, it must be distributed by the Secretary to Tribes/Consortia for comment. The comment period must not be less than 30 days.

§ 1000.2020 What may the Tribe's/Consortium's annual report on self-governance address?

(a) The Tribe's/Consortium's annual self-governance report may address:

(1) A list of unmet Tribal needs in order of priority;

(2) The approved, year-end Tribal/Consortium budget for the programs and services funded under self-governance, summarized, and annotated as the Tribe/Consortium may deem appropriate;

(3) Identification of any reallocation of trust programs;

(4) Program and service delivery highlights, which may include a narrative of specific program redesign or other accomplishments, or benefits attributed to self-governance; and

(5) At the Tribe's/Consortium's option, a summary of the highlights of the report referred to in paragraph (a)(2) of this section and other pertinent information the Tribe/Consortium may wish to report.

(b) The report submitted under this section is intended to provide the Department with information necessary to meet its Congressional reporting responsibilities and to fulfill its responsibility as an advocate for self-governance. The report is not intended to be burdensome, and Tribes/Consortia are encouraged to design and present the report in a brief and concise manner.

§ 1000.2025 Are there other data submissions or reports that Tribes/Consortia may be requested to submit?

Yes, Tribes/Consortia may be requested to submit data for the Secretary to determine allocation of funds to be awarded under a funding agreement.

§ 1000.2030 Are Tribes/Consortia required to submit Single Audit Act reports?

Yes. The Single Agency Audit Act, 31 U.S.C. 7501 *et seq.,* and subparts E and F of 2 CFR part 200 applies to a funding agreement under this part. The Tribe/Consortium must provide to the designated official an annual single audit report as prescribed by 31 U.S.C. 7501, *et seq.*

§ 1000.2035 Is there an exemption available for the requirement to submit Single Audit Act reports?

Yes. In accordance with 2 CFR 200.501(d), a non-Federal entity that expends less than the amount as published by OMB during the entity's fiscal year in Federal awards is exempt from submitting an annual single audit report for that year.

§ 1000.2040 Are Tribes/Consortia required to maintain reports and records in accordance with 25 U.S.C. 5305?

Yes, Tribes/Consortia are required to maintain reports and records in accordance with 25 U.S.C. 5305.

Subpart Q—Operational Provisions

§ 1000.2101 How can a Tribe/Consortium hire a Federal employee to help implement a funding agreement?

If a Tribe/Consortium chooses to hire a Federal employee, it can use, in addition to any other available options, one of the arrangements listed in this section:

(a) The Tribe/Consortium can use its own personnel hiring procedures. Federal employees hired by the Tribe/Consortium are separated from Federal service.

(b) The Tribe/Consortium can ''direct hire'' a Federal employee as a Tribal/Consortium employee. The employee will be separated from Federal service and work for the Tribe/Consortium, but maintain a negotiated Federal benefit package that is paid for by the Tribe/Consortium out of funding agreement program funds; or

(c) The Tribe/Consortium can negotiate an agreement under the Intergovernmental Personnel Act, 5 U.S.C. 3371 through 3375, 25 U.S.C. 323, 25 U.S.C. 48, or other applicable Federal law. The employee will remain a Federal employee during the term of the agreement.

§ 1000.2105 Can a Tribe/Consortium employee be detailed to a Federal service position?

Yes, under the Intergovernmental Personnel Act, 5 U.S.C. 3371 through 3375, 25 U.S.C. 323, 25 U.S.C. 48, or other applicable law, when permitted by the Secretary.

§ 1000.2110 How does the Freedom of Information Act apply?

(a) Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law.

(b) Unless the Tribe/Consortium specifies otherwise in a funding agreement, records of the Tribe/Consortium shall not be considered Federal records for the purpose of the Freedom of Information Act.

(c) The Freedom of Information Act does not apply to records maintained solely by Tribes/Consortia.

§ 1000.2115 How does the Privacy Act apply?

Unless the Tribe/Consortium specifies otherwise, records of the Tribe/Consortium shall not be considered Federal records for the purposes of the Privacy Act.

§ 1000.2120 What audit requirements must a Tribe/Consortium follow?

The Single Agency Audit Act, 31 U.S.C. 7501 *et seq.,* and subparts E and F of 2 CFR part 200 apply to a funding agreement under this part. The Tribe/Consortium must provide to the designated official an annual single audit as prescribed by 31 U.S.C. 7501, *et seq.*

§ 1000.2125 How do OMB circulars and the Act apply to funding agreements?

(a) A Tribe/Consortium shall apply cost principles under the applicable OMB circular, except as modified by:

(1) Any provision of law, including 25 U.S.C. 5325; or

(2) Any exemptions or exceptions granted by OMB.

(b) In any circumstances where the provisions of Federal statutes or this part differ from the provisions of 2 CFR part 200, the provisions of the Federal statutes or this part govern. This includes the provisions of Public Law 93–638, including 25 U.S.C. 5325 and 5365(c).

§ 1000.2130 How much time does the Federal Government have to make a claim against a Tribe/Consortium relating to any disallowance of costs, based on an audit?

Any claim by the Federal Government against a Tribe/Consortium relating to the disallowance of costs for funds received under a funding agreement based on any audit (other than those relating to a criminal offense) shall be subject to the 365-day period set forth in 25 U.S.C. 5325(f), as prescribed by 25 U.S.C. 5365(c)(3).

§ 1000.2135 Does a Tribe/Consortium have additional ongoing requirements to maintain minimum standards for Tribe/Consortium management systems?

(a) Yes, for a Tribe/Consortium required to perform an annual audit under the Single Audit Act and subparts E and F of 2 CFR part 200, the Tribe/Consortium must maintain management systems that are determined to be adequate by an independent audit.

(b) For a Tribe/Consortium that is not required to perform an annual audit under the Single Audit Act, the financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the funding agreement, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the requirements of the funding agreement.

(c) As prescribed by subparts E and F of 2 CFR part 200, every Tribe/Consortium must establish and maintain effective internal controls over funds included in a funding agreement that provide reasonable assurances that the Tribe/Consortium is managing the funds in compliance with Federal statutes, regulations, and the terms and conditions of the funding agreement.

§ 1000.2140 Are there any restrictions on how funds awarded to a Tribe/Consortium under a funding agreement may be spent?

Yes, funds awarded to a Tribe/Consortium under a funding agreement may be spent only for costs associated with PSFAs subject to the funding agreement.

§ 1000.2145 What standard applies to a Tribe's/Consortium's management of funds awarded under a funding agreement?

Funds awarded a Tribe/Consortium under a funding agreement, including advance payments, shall be managed by the Tribe/Consortium using the prudent investment standard, provided that the Secretary shall not be liable for any investment losses of funds managed by the Tribe/Consortium that are not otherwise guaranteed or insured by the Federal Government.

The prudent investment standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation but in the context of the investment portfolio and as part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the Tribe/Consortium. In making and implementing investment decisions, the Tribe/Consortium has a duty to diversify the investment, unless, under the circumstances, it is prudent not to do so. In addition, the Tribe/Consortium must:

(a) Conform to fundamental fiduciary duties of loyalty and impartiality;

(b) Act with prudence in deciding whether and how to delegate authority and in the selection and supervision of agents; and

(c) Incur only costs that are reasonable in amount and appropriate to the investment responsibilities of the Tribe/Consortium.

§ 1000.2150 How may interest or investment income that accrues on funds awarded under a funding agreement be used?

(a) Interest or income earned on investments or deposits of awards made under a funding agreement may be:

(1) Used for any governmental purpose approved by the Tribe/Consortium; or

(2) Used to provide expanded services under the funding agreement and to support some or all of the costs of investment services.

(b) The retention of interest or investment income under paragraph (a) shall not diminish the amount of funds a Tribe/Consortium is entitled to receive under a funding agreement in the year the interest or income is earned or in a subsequent fiscal year.

§ 1000.2155 Can a Tribe/Consortium retain savings from programs?

Yes, notwithstanding any provision of an appropriations Act, the Tribe/Consortium may retain savings for each fiscal year during which a funding agreement is in effect. A Tribe/Consortium must use any savings that it realizes under a funding agreement, including a construction contract:

(a) To provide additional services or benefits under the funding agreement; or

(b) As carryover; and

(c) For purposes of this subpart only, programs administered by BIA using appropriations made to other Federal agencies, such as the U.S. Department of Transportation, will be treated in accordance with paragraph (b).

§ 1000.2160 Can a Tribe/Consortium carry over funds not spent during the term of the funding agreement?

(a) Yes. Notwithstanding any provision of an appropriations Act, all funds paid to a Tribe/Consortium in accordance with a compact or funding agreement shall remain available until expended.

(b) If a Tribe/Consortium elects to carry over funding from one year to the next, the carryover shall not diminish the amount of funds the Tribe/Consortium is entitled to receive under a funding agreement in that fiscal year or any subsequent fiscal year.

(c) A Tribe/Consortium may elect to carry over funding from one year to the next without any additional justification or document necessary for expenditure.

§ 1000.2165 After a non-BIA funding agreement has been executed and the funds transferred to a Tribe/Consortium, can a bureau request the return of unexpended funds?

The non-BIA bureau may request the return of unexpended funds already transferred to a Tribe/Consortium only under the following circumstances:

(a) Retrocession;

(b) Reassumption;

(c) Construction, when there are special legal requirements; or

(d) As otherwise provided for in the funding agreement.

§ 1000.2170 How can a person or group appeal a decision or contest an action related to a program operated by a Tribe/Consortium under a funding agreement?

(a) *BIA Programs.* A person or group who is aggrieved by an action of a Tribe/Consortium with respect to programs that are provided by the Tribe/Consortium under a funding agreement must follow Tribal administrative procedures.

(b) *Non-BIA Programs.* Procedures will vary depending on the program.

Aggrieved parties should initially contact the local program administrator (the Indian program contact). Thereafter, appeals will follow the relevant bureau's appeal procedures.

§ 1000.2175 Must Tribes/Consortia comply with the Secretarial approval requirements of 25 U.S.C. 81; 82a; and 476 regarding professional and attorney contracts?

No, for the period that an agreement entered into under this part is in effect, the provisions of 25 U.S.C. 81, 82a, and 476, do not apply to attorney and other professional contracts by participating Tribes/Consortia.

§ 1000.2180 Are funds awarded under a funding agreement non-Federal funds for the purpose of meeting matching or cost participation requirements?

(a) Yes, in accordance with 25 U.S.C. 5363(j), all funds provided under funding agreements shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.

(b) Alternatively, a Tribe/Consortium may elect under 25 U.S.C. 5363(*l*) to incorporate 25 U.S.C. 5325(j) in their funding agreement for the purpose of meeting matching or cost participating requirements under other Federal and non-Federal programs.

§ 1000.2185 Does Indian preference apply to services, activities, programs, and functions performed under a funding agreement?

Yes, in accordance with section 25 U.S.C. 5307(b) and (c), as amended, Tribal law governs Indian preference in employment in contracting and subcontracting in performance of a funding agreement.

§ 1000.2190 Do the wage and labor standards in the Davis-Bacon Act apply to Tribes and Tribal Consortia?

No, wage and labor standards of the Davis-Bacon Act, 40 U.S.C. 3141 through 3144, 3146 and 3147, do not apply to employees of Tribes and Tribal Consortia. Davis-Bacon wage and labor standards do apply to all other laborers and mechanics employed by contractors and subcontractors of a Tribe/Consortium in the construction, alteration, and repair (including painting or redecorating) of buildings or other facilities in connection with a funding agreement.

§ 1000.2195 Can a Tribe/Consortium use Federal supply sources in the performance of a funding agreement?

Yes. A Tribe/Consortium and its employees may use Federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) or other Federal resources (including supplies, services and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), to the same extent as if the Tribe/Consortium were a Federal agency. While implementation of this provision is the responsibility of the General Services Administration, the Department shall assist the Tribes/Consortia to resolve any barriers to full implementation that may arise to the fullest extent possible.

§ 1000.2200 Does the Prompt Payment Act (31 U.S.C. 3901) apply to a BIA funding Agreement?

Yes. The Prompt Payment Act (31 U.S.C. 3901) applies to a BIA funding agreement.

§ 1000.2205 Does the Prompt Payment Act (31 U.S.C. 3901) apply to a non-BIA program funding agreement?

Yes, unless restricted by a funding agreement, the Prompt Payment Act shall apply to a non-BIA funding agreement.

§ 1000.2210 Is a Tribe/Consortium obligated to continue performance under a compact or funding agreement if the Secretary does not transfer sufficient funds?

A Tribe/Consortium shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement. If at any time the Tribe/Consortium has reason to believe that the total amount provided for a specific activity under a compact or funding agreement is insufficient, the Tribe/Consortium shall provide reasonable notice of such insufficiency to the Secretary. If, after notice, the Secretary does not increase the amount of funds transferred under the funding agreement, the Tribe/Consortium may suspend performance of the activity until such time as additional funds are transferred. Nothing in 25 U.S.C. 5368(*l*) reduces any programs, services, or funds of, or provided to, another Tribe/Consortium.

Subpart R—Appeals

§ 1000.2301 What is the purpose of this subpart?

This subpart prescribes the process Tribes/Consortia may use to resolve disputes with the Department arising before or after execution of a funding agreement or compact and certain other disputes related to self-governance.

§ 1000.2302 What does "title-I eligible programs" mean in this subpart?

Throughout this subpart, the phrase ''title-I-eligible programs'' is used to refer to all PSFAs that the Secretary provides for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department within which the PSFAs have been performed.

§ 1000.2305 How must disputes be handled?

(a) The Department encourages its bureaus to seek all means of dispute resolution before the Tribe/Consortium files a formal appeal(s).

(b) Disputes shall be addressed through government-to-government discourse. This discourse must be respectful of government-to-government relationships and relevant Federal-Tribal agreements, treaties, judicial decisions, and policies pertaining to Indian Tribes, including, but not limited to, such applicable principles described in subpart I.

(c) All disputes arising under this rule, including, but not limited to, disputes related to decisions described in § 1000.2345, may use non-binding informal alternative dispute resolution, such as an informal conference or assistance of the Department's Office of Collaborative Action and Dispute Resolution (CADR), at the option of the Tribe/Consortium. The Tribe/Consortium may ask for this alternative dispute resolution any time before the issuance of an initial decision of a formal appeal. The appeals timetable will be suspended while alternative dispute resolution is pending.

§ 1000.2310 Does a Tribe/Consortium have any options besides an appeal?

Yes, the Tribe/Consortium may request a non-binding alternative dispute resolution process-without the need for a formal appeal. Or, the Tribe/Consortium may, in lieu of filing an administrative appeal under this subpart, file an action in an appropriate Federal court under 25 U.S.C. 5331, or any other applicable law.

§ 1000.2315 What is the Secretary's burden of proof for appeals in this subpart?

As required by sections 25 U.S.C. 5366(d) and 5375, in any administrative action, appeal, or civil action for judicial review of any decision made by the Secretary under this title, the Secretary shall have the burden of proof:

(a) To demonstrate by a preponderance of the evidence the validity of the grounds for a reassumption under 25 U.S.C. 5366(b);

(b) To clearly demonstrate the validity of the grounds for rejecting a final offer made under 25 U.S.C. 5366(c); and

(c) Except as provided in 25 U.S.C. 5366(d), to demonstrate by a preponderance of the evidence the validity of the grounds for a decision made and the consistency of the decision with the requirements and policies of the Act.

Informal Conference

§ 1000.2320 How does a Tribe/Consortium request an informal conference?

The Tribe/Consortium shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision.

(a) The Tribe/Consortium may either hand-deliver the request for an informal conference to that person's office, email the request, or mail it by certified mail, return receipt requested.

(b) If the Tribe/Consortium mails the request, it will be considered filed on the date the Tribe/Consortium mailed it by certified mail. If the Tribe/Consortium emails the request, it will be presumed received on the next business day following transmission from the Tribe/Consortium.

(c) The document should be clearly identified as ''Request for Informal Conference''.

§ 1000.2325 How is an informal conference held?

For all purposes relating to these informal conference procedures, the parties are the designated representatives of the Tribe/Consortium and the bureau.

(a) The informal conference shall be held within 30 days of the date the request was received, unless the parties agree on another date.

(b) If possible, at the option of the Tribe/Consortium, the informal conference will be held at the Tribe's/Consortium's office. If the meeting cannot be held at the Tribe's/Consortium's office, the parties must agree on an alternative meeting place or forum, including but not limited to telephonic or virtual meeting forums. If the alternative meeting place is more than fifty miles from the Tribe's/Consortium's office, the Secretary must arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Tribe/Consortium.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only the parties may make presentations at the informal conference.

(e) The informal conference is not a hearing on the record. Nothing said during an informal conference may be used by either party in litigation.

§ 1000.2330 What happens after the informal conference?

(a) Within 10 business days of the informal conference, the person who conducted the informal conference shall prepare and mail to the Tribe/Consortium a brief summary of the informal conference. The summary must include any agreements reached or changes from the initial position of the bureau or the Tribe/Consortium.

(b) Every summary of an informal conference must contain the following language:

Within 30 days of the receipt of the summary from the informal conference, you may file an appeal of the initial decision of the Department of the Interior agency in accordance with subpart R of 25 CFR part 1000. Alternatively, you may file an action in Federal court pursuant to 25 U.S.C. 5331.

(c) If in its judgment no agreement was reached, the Tribe/Consortium may choose to appeal the initial decision, as modified by any changes made as a result of the informal conference, under this subpart.

Post-Award Disputes

§ 1000.2335 How may a Tribe/Consortium appeal a decision made after the funding agreement or compact or an amendment to a funding agreement or compact has been signed?

With the exception of certain decisions concerning immediate reassumption (*see* §§ 1000.2405 through 1000.2430), the Tribe/Consortium may appeal post-award administrative decisions to the Civilian Board of Contract Appeals (CBCA).

§ 1000.2340 What statutes and regulations govern resolution of disputes concerning signed funding agreements or compacts (and any signed amendments) that are appealed to the CBCA?

25 U.S.C. 5331 and the regulations at 25 CFR 900.216 through 900.230 apply to disputes concerning signed funding agreements and compacts (and any signed amendments), that are appealed to the CBCA, except that any references to the U.S. Department of Health and Human Services are inapplicable. For purposes of such appeals:

(a) The terms ''contract'' and ''self-determination contract'' mean compacts and funding agreements entered into under the Act; and

(b) The term ''Tribe'' means ''Tribe/Consortium''.

Pre-Award Disputes

§ 1000.2345 What decisions may a Tribe/Consortium appeal under §§ 1000.2345 through 1000.2395?

Decisions that a Tribe/Consortium may appeal include, but are not limited to:

(a) A decision to reject a final offer, or a portion thereof, under 25 U.S.C. 5366(c);

(b) A decision to reject a proposed amendment to a compact or funding agreement, or a portion thereof, under 25 U.S.C. 5366(c);

(c) A decision that provisions in a retained funding agreement and/or compact are directly contrary to any express provision of the Act;

(d) A decision to reassume a compact or funding agreement, in whole or in part, under 25 U.S.C. 5366(b), except for immediate reassumptions under 25 U.S.C. 5366(b)(3);

(e) A decision to reject a final construction project proposal, or a portion thereof, under 25 U.S.C. 5367(g) and subpart K of this part; and

(f) For construction project agreements carried out under 25 U.S.C. 5367, a decision to reject project planning documents, design documents, or proposed amendments submitted by a Tribe/Consortium under 25 U.S.C. 5367(h)(1) and subpart K of this part.

§ 1000.2350 What decisions may not be appealed under §§ 1000.2345 through 1000.2395?

Decisions that may not appealed under §§ 1000.2345 through 1000.2395 shall be limited to:

(a) Disputes arising under the terms of a compact, funding agreement, or construction project agreement that has been awarded;

(b) Disputes arising from immediate reassumptions under 25 U.S.C. 5366(b)(3) and § 1000.1750 which is covered under §§ 1000.2405 through 1000.2430;

(c) Decisions relating to planning and negotiation grants (subparts C and D of this part) and certain discretionary grants not awarded under title IV (25 CFR part 2);

(d) Decisions regarding requests for waivers of regulations (subpart J of this part);

(e) Decisions regarding construction (subpart K of this part) addressed in § 1000.1455; and

(f) Decisions under any other statute, such as the Freedom of Information Act and the Privacy Act (*see* 43 CFR part 2).

§ 1000.2351 To Whom may a Tribe/Consortium appeal a decision made before the funding agreement, amendment to the funding agreement, or compact is signed?

(a) *Title-I-eligible PSFA pre-award disputes.* For title I—eligible PSFA disputes, appeal may only be filed with Interior Board of Indian Appeals (IBIA) under the provisions set forth in 25 CFR 900.150(a) through (h), 900.152 through 900.169.

(b) *Other pre-award disputes.* For all other pre-award disputes, including those involving PSFAs that are not title I-eligible, appeals may be filed with the bureau head/Assistant Secretary or IBIA as noted below. However, the Tribe/Consortium may not avail itself of both paths for the same dispute.

(1) *Bureau head/Assistant Secretary appeal.* Unless the initial decision being appealed is one that was made by the bureau head (those appeals are forwarded to the appropriate Assistant Secretary—*see* § 1000.2360(c)), the bureau head will decide appeals relating to these pre-award matters, that include but are not limited to disputes regarding:

(i) PSFAs that are not title 1-eligible;

(ii) Inherently Federal functions;

(iii) Decisions declining to provide requested information as addressed in § 1000.1035; and

(iv) Allocations of program funds when a dispute arises between a Consortium and a withdrawing Tribe.

(2) *IBIA.* The Tribe/Consortium may choose to forego the administrative appeal through the bureau or the Assistant Secretary, as described in the paragraph (b)(1) of this section, and instead appeal directly to IBIA.

§ 1000.2355 How does a Tribe/Consortium know where and when to file an appeal?

Every decision in any of the areas listed in § 1000.2345 must contain information which shall tell the Tribe/Consortium where and when to file the Tribe's/Consortium's appeal. Each decision shall include the following statement:

Within 30 days of the receipt of this decision, you may request non-binding informal alternative dispute resolution, such as an informal conference under § 1000.2320, or file an appeal of the initial decision of the Department in accordance with subpart R of this part. Alternatively, you may file an action in Federal court pursuant to 25 U.S.C. 5331.

Appeals to Bureau Head/Assistant Secretary

§ 1000.2360 When and how must a Tribe/Consortium appeal an adverse pre-award decision to the bureau head/Assistant Secretary?

(a) If a Tribe/Consortium wishes to exercise its appeal rights to the bureau head/Assistant Secretary under § 1000.2351, it must make a written request for review to the appropriate bureau head within 30 days of receiving the initial adverse decision or the conclusion of any non-binding informal alternative dispute resolution process. In addition, the Tribe/Consortium may request the opportunity to have a meeting with appropriate bureau personnel in an effort to clarify the matter under dispute before a formal decision by the bureau head.

(b) The written request for review should include a statement describing its reasons for a review, with any supporting documentation, or indicate that such a statement or documentation will be submitted within 30 days. A copy of the request must also be sent to the Director of the OSG.

(c) If the initial decision was made by the bureau head, any appeal shall be directed to the appropriate Assistant Secretary. If a Tribe does not request a review within 30 days of receipt of the decision, the initial decision will be final for the Department.

§ 1000.2365 When must the bureau head (or appropriate Assistant Secretary) issue a final decision in the pre-award appeal?

Within 30 days of receiving the request for review and the statement of reasons described in § 1000.2360, the bureau head or, where applicable, the appropriate Assistant Secretary must:

(a) Issue a written final decision stating the reasons for the decision; and

(b) Send the decision to the Tribe/Consortium.

§ 1000.2370 When and how will the Assistant Secretary respond to an appeal by a Tribe/Consortium?

The appropriate Assistant Secretary will decide an appeal of any initial decision made by a bureau head (*see* § 1000.2360). If the Tribe/Consortium has appealed the bureau's initial adverse decision of the bureau to the bureau head and the bureau head's decision on initial appeal is contrary to the Tribe's/Consortium's request for relief, or the bureau head fails to make a decision within 30 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation, the Tribe's/Consortium's appeal will be sent automatically to the appropriate Assistant Secretary for decision. The Assistant Secretary must either concur with the bureau head's decision or issue a separate decision within 60 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation. The decision of the Assistant Secretary is final for the Department.

Appeals to IBIA

§ 1000.2375 When and how must a Tribe/Consortium appeal an adverse pre-award decision to the IBIA?

(a) If a Tribe/Consortium wishes to exercise its appeal rights to the IBIA under § 1000.2351, it must file a notice of appeal to the IBIA within 30 days of receiving the initial decision or the conclusion of any non-binding informal alternative dispute resolution process.

(b) The Tribe/Consortium may either hand-deliver the notice of appeal to the IBIA, or mail it by certified mail, return receipt requested. If the Tribe/Consortium mails the Notice of Appeal it will be considered filed on the date the Tribe/Consortium mailed it by certified mail. The Tribe/Consortium should mail the notice of appeal to: Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N Quincy Street, Suite 300, Arlington, VA 22203.

(c) The Notice of Appeal must include:

(1) A statement describing the Tribe's/Consortium's reasons for a review (including why the Tribe/Consortium thinks the initial decision is wrong and briefly identify the issues involved in the appeal);

(2) Any supporting documentation;

(3) If the Tribe/Consortium's Notice of Appeal does not include the items in the above paragraphs (1) or (2), an indication that such a statement or documentation will be submitted within 30 days; and

(4) A statement whether the Tribe/Consortium wants a hearing on the record, or whether the Tribe/Consortium wants to waive its right to a hearing.

(d) The Tribe/Consortium must serve a copy of the notice of appeal upon the official whose decision it is appealing. A copy of the notice of appeal must also be sent to the Director of the OSG. The Tribe/Consortium must certify to the IBIA that it has done so.

(e) The authorized representative of the Secretary will be considered a party to all appeals filed with the IBIA under the Act.

§ 1000.2380 What happens after a Tribe/Consortium files an appeal?

(a) Within 5 days of receiving the Tribe's/Consortium's notice of appeal, the IBIA will decide whether the appeal falls under § 1000.2345. If so, the Tribe/Consortium is entitled to a hearing.

(b) If the IBIA cannot make that decision based on the information included in the notice of appeal, the IBIA may ask for additional statements from the Tribe/Consortium, or from the appropriate Federal agency. If the IBIA asks for more statements, it will make its decision within 5 days of receiving those statements.

(c) If the IBIA decides that the Tribe/Consortium is not entitled to a hearing or if the Tribe/Consortium has waived its right to a hearing on the record, the IBIA will dismiss the appeal and inform the Tribe/Consortium that it is not entitled to a hearing or has waived its right to a hearing.

§ 1000.2385 What procedures apply to Interior Board of Indian Appeals (IBIA) proceedings?

The IBIA may use the procedures set forth in 43 CFR 4.22 through 4.27 as a guide.

§ 1000.2386 What regulations govern resolution of disputes that are appealed to the IBIA?

To the extent not inconsistent with this subpart, the regulations at 25 CFR 900.159 through 900.169 apply to disputes that are appealed to the IBIA, except that any references to the U.S. Department of Health and Human Services are inapplicable. For purposes of such appeals:

(a) The terms ''contract'' and ''self-determination contract'' mean compacts and funding agreements entered into under the Act; and

(b) The term ''Tribe'' means ''Tribe/Consortium.''

§ 1000.2390 Will an appeal adversely affect the Tribe's/Consortium's rights in other compact, funding negotiations, or construction project agreement?

No, a pending appeal will not adversely affect or prevent the negotiation or award of another compact, funding agreement, or construction project agreement.

§ 1000.2395 Will the decision on appeal be available for the public to review?

Yes, the Secretary shall publish all final decisions from the Administrative Law Judge (ALJs) and IBIA under this subpart. Decisions can be found on the Department's website.

Appeals of an Immediate Reassumption of a Self-Governance Program

§ 1000.2405 What happens in the case of an immediate reassumption under 25 U.S.C. 5366(b)?

If the Secretary immediately reassumes a program under § 1000.1750, the Secretary must comply with §§ 1000.2410 through 1000.2430.

§ 1000.2410 Will there be a hearing?

Yes, unless the Tribe/Consortium waives its right to a hearing in writing. The Deputy Director of the Office of Hearings and Appeals must appoint an ALJ to hold a hearing.

(a) The hearing must be held within 10 days of the date of the notice referred to in § 1000.1750 unless the Tribe/Consortium agrees to a later date.

(b) If possible, the hearing will be held at the office of the Tribe/Consortium. The parties may agree to an alternative meeting place or forum, including but not limited to telephonic or virtual meeting forums. If the hearing is held more than 50 miles from the office of the Tribe/Consortium, the Secretary must arrange to pay transportation costs and per diem for incidental expenses. This will allow for adequate representation of the Tribe/Consortium.

§ 1000.2415 What happens after the hearing?

(a) Within 30 days after the end of the hearing or any post-hearing briefing schedule established by the ALJ, the ALJ must send all parties a recommended decision by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision must also state that the Tribe/Consortium has the right to object to the recommended decision.

(b) The recommended decision must contain the following statement:

Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the IBIA under 25 CFR 1000.2420. An appeal to the IBIA under shall be filed at the following address: Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N Quincy Street, Suite 300, Arlington, VA 22203. You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

§ 1000.2420 Is the recommended decision always final?

No, any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 15 days of receiving the recommended decision. The objecting party must serve a copy of its objections on the other party. The recommended decision will become final 15 days after the Tribe/Consortium receives the ALJ's recommended decision, unless a written statement of objection is filed with the IBIA during the 15-day period. If no party files a written statement of objections within 15 days, the recommended decision will become final.

§ 1000.2425 If a Tribe/Consortium objects to the recommended decision, what action will the IBIA take?

(a) The IBIA has 15 days from the date the Secretary receives timely written objections to modify, adopt, or reverse the recommended decision. If the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the IBIA must:

(1) Be in writing;

(2) Specify the findings of fact or conclusions of law that are modified or reversed;

(3) Give reasons for the decision, based on the record; and

(4) State that the decision is final for the Department.

§ 1000.2430 Will an immediate reassumption appeal adversely affect the Tribe's/Consortium's rights in other self-governance negotiations?

No, a pending appeal will not adversely affect or prevent the negotiation or award of another compact, funding agreement, or construction project agreement.

Equal Access to Justice Act

§ 1000.2435 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

Yes. EAJA claims against the Department will be heard under 48 CFR 6101.30, 6101.31 (CBCA) and 43 CFR 4.602, 4.604 through 4.628 (Department) and under the Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412.

Subparts S—Conflicts of Interest

§ 1000.2501 Is a Tribe/Consortium required to have policies in place to address conflicts of interest?

Yes. A Tribe/Consortium participating in self-governance must ensure that internal measures are in place to address, pursuant to Tribal law and procedures, conflicts of interest in the administration of programs carried out under a compact and funding agreement.

The Tribe/Consortium and the Secretary may agree that using the Tribe's/Consortium's own written code of ethics satisfies the objectives of the personal conflicts and organizational conflicts provisions of this subpart, in whole or in part.

When the Secretary and the Tribe/Consortium agree to use the Tribe's/Consortium's written codes or measures, the funding agreement will reflect that and the agreed-upon provisions shall be followed, rather than the related provisions of this subpart.

§ 1000.2505 What is an organizational conflict of interest?

(a) An organizational conflict of interest arises when, in the administration of programs performed under a compact or funding agreement subject to this part, there is a direct conflict between the financial interests of the Tribe/Consortium and:

(1) The financial interests of beneficial owners of Indian trust resources;

(2) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed under the Alaska Native Claims Settlement Act, 43 U.S. C. 1601 *et seq.;* or

(3) An express statutory obligation of the United States to third parties. This section only applies if the conflict was not addressed when the funding agreement was first negotiated.

(b) This section only applies where the financial interests of the Tribe/Consortium are significant enough to impair the Tribe's/Consortium's objectivity in carrying out the funding agreement, or a portion of the funding agreement.

§ 1000.2510 What must a Tribe/Consortium do if an organizational conflict of interest arises under a funding agreement?

This section only applies if the conflict was not addressed when the funding agreement was first negotiated. When a Tribe/Consortium becomes aware of an organizational conflict of interest, the Tribe/Consortium must immediately disclose the conflict to the Secretary.

§ 1000.2515 When must a Tribe/Consortium regulate its employees or subcontractors to avoid a personal conflict of interest?

A Tribe/Consortium must maintain written standards of conduct, pursuant to Tribal law and procedures, to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets performed under a compact and funding agreement subject to this part.

§ 1000.2520 What types of personal conflicts of interest involving Tribal officers, employees, or subcontractors would have to be regulated by a Tribe/Consortium?

The Tribe/Consortium must ensure that internal measures are in place that specify that no officer, employee, or agent (including a subcontractor) of the Tribe/Consortium reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the beneficiary is the Tribe/Consortium or an allottee. Interests arising from membership in, or employment by, a Tribe/Consortium or rights to share in a Tribal claim need not be regulated.

§ 1000.2525 What personal conflicts of interest must the standards of conduct regulate?

The personal conflicts of interest standards, established pursuant to Tribal law and procedures, must:

(a) Prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of trust transactions involving an entity in which such persons have a direct financial interest or an employment relationship;

(b) Prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Tribe/Consortium) with an interest the trust transactions under review; and

(c) Provide for sanctions or remedies for violation of the standards.

Subpart T—Tribal Consultation Process

§ 1000.2601 What is the purpose of this subpart?

(a) This subpart describes the process for engaging in consultations related to self-governance with Tribes/Consortia.

(b) The Tribal Consultation Process for self-governance matters described in this subpart is intended to apply to consultations commencing after the effective date of this rule and supersedes previous self-governance consultation processes used by the Secretary.

§ 1000.2605 When does the Secretary consult with Tribes and Consortia on matters related to self-governance?

On matters related to self-governance, the Secretary shall consult:

(a) To determine which programs are eligible for negotiation to be included in a funding agreement at the request of a participating Tribe/Consortium;

(b) To establish programmatic targets to encourage the Department's bureaus to ensure that an appropriate portion of non-BIA programs are available to be included in funding agreements;

(c) On any Secretarial Action with Tribal Implications, provided that the Secretary incorporate input and requests from Tribes and Consortia on topics for consultation.

§ 1000.2610 What principles should guide consultations with Tribes and Consortia?

To the extent practical and not prohibited by law, consultations with self-governance Tribes/Consortia should satisfy the following principles:

(a) Consultation recognizes Tribal sovereignty and the Nation-to-Nation relationship between the United States and Tribes and Consortia and acknowledges that the United States holds treaty and trust responsibilities to Tribes and Consortia.

(b) Consultation is a two-way Nation-to-Nation exchange of information and dialogue between official representatives of the United States and Tribes and Consortia.

(c) Consultation session methods may include, but are not limited to, in-person meetings, video conferences, teleconferences, and correspondence to discuss a specific issue, and must identify the session as consultation in advance of the scheduled meeting.

(d) Consultation should include both the elected or appointed official of the Tribe, acting in the official capacity as the leader of the Tribe or Consortia, or designee of the elected or appointed representative, and the Departmental official with authority to decide on the proposed Departmental Action with Tribal Implications, or designee.

(e) The Secretary shall make good faith efforts to invite Tribes and Consortia to consult early in the planning process and throughout the decision-making process and engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions with Tribal implications.

(f) The Secretary should give meaningful consideration to information obtained during consultation with Tribes and Consortia.

(g) The Secretary should strive for consensus with Tribes and Consortia through consultation or a mutually desired outcome. It is the policy of the Department to seek consensus with Tribes and Consortia.

(h) Consultation will ensure that applicable information is readily available to Tribes and Consortia.

(i) Consultation will ensure that officials from Tribes and Consortia and Federal officials have adequate time to communicate.

(j) Consultation will ensure that Tribes and Consortia are advised as to how their input influenced the Department's decision-making.

§ 1000.2615 What notice must the Secretary provide to Tribes and Consortia of an upcoming consultation?

(a) The Secretary shall issue a notice of consultation which includes:

(1) Sufficient information on the topic to be discussed, in an accessible language and format, and context for the consultation topic, to facilitate meaningful consultation;

(2) Identification of a timeline of the process and possible outcomes for Departmental action under consideration;

(3) The date, time, and location of the consultation;

(4) If consulting virtually or by telephone, links to join or register in advance;

(5) An explanation of any time constraints known to the Department at that time;

(6) Deadlines for Tribes and Consortia to submit written comments on the topic; and

(7) The names and contact information for Departmental staff who can provide additional information on the consultation.

(b) The Secretary shall provide notice of at least 30 days to Tribes and Consortia of any planned consultation sessions.

(c) The Secretary shall distribute such notice under this section to each Tribe/Consortium through:

(1) Email to a point of contact for each Tribe and Consortium; and

(2) Posting the notice on the website for the Department and/or OSG.

(d) The Secretary should, to the greatest extent practical, provide appropriate, available information on the subject of consultation including, where consistent with applicable law, a proposed agenda, framing paper, and other relevant documents to assist in the consultation process.

§ 1000.2620 Is the Secretary required to allow written comments by Tribes and Consortia following a consultation?

Yes. The Secretary shall allow for a written comment period following the consultation of at least 30 days, unless otherwise directed by law.

§ 1000.2625 What record must the Secretary maintain following a consultation with Tribes and Consortia?

(a) The Secretary shall maintain a record of a consultation with Tribes or Consortia that includes:

(1) A summary of Tribal or Consortia input received;

(2) A general explanation of how Tribes or Consortia input influenced or was incorporated into the agency action; and

(3) If relevant, the general reasoning for why suggestions from Tribes or Consortia were not incorporated into the agency action or why consensus could not be attained.

(b) The Secretary shall timely disclose the outcome of a consultation and decisions made as a result of the consultation.

(c) The record of consultation does not waive any privilege or other exception to disclosure pursuant to the Freedom of Information Act or its implementing regulations.

§ 1000.2630 How must the Secretary handle confidential or sensitive information provided by Tribes and Consortia during a consultation?

Prior to a consultation, the Secretary shall inform Tribes and Consortia of those Federal laws, including the Freedom of Information Act, that may require disclosure of information provided by the self-governance Tribe/Consortium during a consultation. To the extent permitted by applicable law, the Secretary shall ensure that such information designated as confidential or sensitive by a Tribe or Consortium is not publicly disclosed. The Department should obtain advance informed consent from Tribes/Consortia for the use of confidential or sensitive information provided, and should inform Tribal representatives that certain Federal laws, including the Freedom of Information Act, may require disclosure of such information.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–14862 Filed 7–12–24; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 89 Monday,
No. 135 July 15, 2024

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1000, 1001, et al.
Milk in the Northeast and Other Marketing Areas; Proposed Amendments to Marketing Agreements and Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, and 1131

[Doc. No. AMS–DA–23–0031]

Milk in the Northeast and Other Marketing Areas; Proposed Amendments to Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes to amend the pricing provisions in the 11 Federal Milk Marketing Orders (FMMOs).

DATES: Written exceptions and comments to this proposed rule must be submitted on or before September 13, 2024.

ADDRESSES: Written exceptions should be filed with the Office of the Hearing Clerk, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 9203, Room 1031, Washington, DC 20250–9203; Fax: (844) 325–6940 or via the internet at *https://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours or can be viewed at *https://www.regulations.gov.* A plain-language summary of this proposed rule is available at *https://www.regulations.gov* in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231–Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0231, Telephone: (202) 720–7183, Email address: *Erin.Taylor@usda.gov.*

SUPPLEMENTARY INFORMATION: This recommended decision proposes amendments to five categories of milk pricing:

1. *Milk Composition Factors.* Update the factors to 3.3 percent true protein, 6 percent other solids, and 9.3 percent nonfat solids.

2. *Surveyed Commodity Products.* Remove 500-pound barrel cheddar cheese prices from the Dairy Products Mandatory Reporting Program (DPMRP) survey and rely solely on the 40-pound block cheddar cheese price to determine the monthly average cheese price used in the formulas.

3. C*lass III and Class IV Formula Factors.* Update the manufacturing allowances to: Cheese: $0.2504; Butter: $0.2257; Nonfat Dry Milk (NFDM): $0.2268; and Dry Whey: $0.2653. This decision also proposes updating the butterfat recovery factor to 91 percent.

4. *Base Class I Skim Milk Price.* Update the formula as follows: the base Class I skim milk price would be the higher-of the advanced Class III or Class IV skim milk prices for the month. In addition, adopt a Class I extended shelf life (ESL) adjustment equating to a Class I price for all ESL products equal to the average-of mover, plus a 24-month rolling average adjuster with a 12-month lag.

5. *Class I and Class II differentials.* Keep the $1.60 base differential and adopt modified location specific Class I differential values.

In conjunction with this Recommended Decision, the Agricultural Marketing Service (AMS) conducted a Regulatory Economic Impact Analysis to determine the potential impact of amending FMMO pricing formulas on producer revenue and marketwide pool values. AMS used a static analysis incorporating actual data reported from January 2019 to December 2023 to determine the estimated price impacts of the package of amendments included in this Recommended Decision. The full text of the Regulatory Economic Impact Analysis may be accessed at *https://www.regulations.gov* or *https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing.*

Prior Documents in This Proceeding

Notice of Hearing: Published July 24, 2023 (88 FR 47396).

Notice of Reconvened Hearing: Published November 6, 2023 (88 FR 76143).

Notice of Reconvened Hearing: Published December 29, 2023 (88 FR 90134).

This administrative action is governed by sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing a petition with the USDA stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Civil Rights Impact Analysis

AMS has reviewed this rulemaking in accordance with USDA Departmental Regulation 4300–004, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on FMMO participants on the basis of race, color, national origin, disability, sex, gender identity, political beliefs, age, marital, family/parental status, religion, sexual orientation, reprisal, or because of an individuals' income is derived from any public assistance program. Based on the review and analysis of the rule and all available data, issuance of this proposed rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Tribes or persons with disabilities, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this proposed rule.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through

group action of essentially small entities for their own benefit. A small dairy farm as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that has an annual gross revenue of $3.75 million or less, and a small dairy products manufacturer is one that has no more than the number of employees listed in the chart below:

NAICS code	NAICS U.S. industry title	Size standards in number of employees
311511	Fluid Milk Manufacturing	1,150
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	1,000

To determine which dairy farms are ''small businesses,'' the $3.75 million per year income limit was used to establish an annual milk marketing threshold of 18.3 million pounds. Although this threshold does not factor in additional monies that may be received by dairy producers, it should be an accurate standard for most ''small'' dairy farmers. Based on the U.S. 2023 average yield per cow and 2023 NASS average All-Milk price, a dairy farm with approximately 780 cows or fewer would meet the definition of small business. In 2022, the most recent year with statistics available, there were 24,470 dairy farms with milk sales, of which approximately 19,576 had milk regulated on an FMMO for at least one month of the year. Based on the 2022 Census of Agriculture, Milk Cow Herd Size by Inventory and Sales, an estimated 89 percent of operations with milk sales are likely to be small businesses.

To determine a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 750-employee limit for creamery butter manufacturing; the 1,000-employee limit for dry, condensed, and evaporated dairy product manufacturing; the 1,150-employee limit for fluid milk manufacturing; or the 1,250-employee limit for cheese manufacturing; the plant was considered a large business even if the local plant does not exceed the 750, 1,000, 1,150, or 1,250-employee limit, respectively.

In 2022, the following number of plants were regulated for at least one month of the year in each FMMO: 66 plants on the Northeast, 19 plants on the Appalachian, 9 plants on the Florida, 20 plants on the Southeast, 58 plants on the Upper Midwest, 32 plants on the Central, 43 plants on the Mideast, 24 plants on California, 17 plants on the Pacific Northwest, 26 plants on the Southwest, and 8 plants on Arizona. According to the 2022 Census of Agriculture, approximately 86 percent of fluid milk manufacturing plants, approximately 96 percent of cheese plants, approximately 82 percent of dry products plants, and approximately 78 percent of butter plants met the SBA definition of small businesses.

How FMMO Pricing Provisions Currently Operate

The amendments recommended for adoption in this decision cover five milk pricing subject areas: Milk Composition Factors, Surveyed Commodity Products, Class III and Class IV Formula Factors, base Class I skim milk price (Class I mover), and Class I and II Differentials. This decision proposes to amend provisions in all five pricing subject areas. The amendments are intended to update formulas and factors in response to industry changes over time, many of which have not been updated since the provisions were adopted on January 1, 2000, to ensure USDA is carrying out the purposes of the AMAA.

Milk Composition Factors. FMMO milk prices are based on three primary components—protein, other solids, and nonfat solids. Skim milk composition factors in the current price formulas codified in the FMMO regulations were adopted in 2000: 3.1 percent protein, 5.9 percent other solids, and 9 percent nonfat solids. The proposed amendments would increase milk composition factors to 3.3 percent protein, 6.0 percent other solids, and 9.3 percent nonfat solids. Actual component tests of skim milk have increased since 2000, with more significant increases beginning in 2016. The amendments are intended to more accurately represent component levels in milk produced.

Surveyed Commodity Products. Milk prices under FMMOs are related to wholesale prices for butter, cheese, nonfat dry milk, and dry whey. The formulas use USDA-surveyed average wholesale prices to calculate milk component prices (butterfat, protein, nonfat solids, and other solids) that are converted to Class III and IV milk prices. The protein value in cheese is a component of the Class III price. Currently, the prices of commodity cheddar cheese packaged in 40-lb blocks (''blocks'') and 500-lb barrels (''barrels'') are collected weekly by AMS through the DPMRP survey. A monthly average of those prices is used to represent commodity cheese in the Class III price formula. The butterfat value in commodity salted butter is the driver of the butterfat price used in all classified prices. The proposed amendments would eliminate 500-lb barrels from the DPMRP survey and rely solely on the monthly average survey price for 40-lb cheddar blocks. The amendment is intended to provide for more orderly marketing through a survey of only one product.

Class III and IV Formulas Factors. Make allowances are a factor in the FMMO pricing formulas representing the cost of converting raw milk into the four manufactured dairy products surveyed by USDA (butter, cheese, nonfat dry milk, and dry whey). Make allowances were last updated in 2008 following a rulemaking proceeding in 2007. The proposed amendments would update the make allowances in the FMMO Class III and IV formulas to the following: $0.2504 for cheese; $0.2257 for butter; $0.2268 for NFDM; and $0.2653 for dry whey. The proposed amendments would also update the butterfat recovery factor in the Class III formula to 91 percent. The amendments are intended to update the formula factors to be more representative of current costs and butterfat recovery observed in dairy product manufacturing.

Class I mover. The Class I mover is the base price for the skim milk portion of raw milk used in the production of Class I products. The Agriculture Improvement Act of 2018 (2018 Farm Bill) amended the Class I skim milk price mover from the ''higher of'' Class III or Class IV skim prices to a simple average of the two classes plus $0.74, referred to as the ''average of'' mover. The proposed amendments would return the base Class I skim milk price calculation to the higher-of Class III or Class IV skim prices. The proposed amendments would also adopt a rolling monthly Class I ESL adjustment equating to a Class I price for all ESL products equal to the average-of the Class III and Class IV advance prices,

plus a 24-month rolling average adjuster, with a 12-month lag. The monthly Class I ESL adjustment would be calculated as the average of the differences between the higher-of and the average-of calculations for the prior 13 to 36 months. The amendments are intended to provide for more orderly marketing by returning to the higher-of mover; while the Class I ESL adjustment would provide better price equity for ESL products whose marketing characteristics are distinct from other Class I products.

Class I and II Differentials. FMMO Class I prices are calculated as the average of the advanced Class III and Class IV prices, plus $0.74, plus a location-specific differential referred to as a Class I differential. As the value of milk varies by location, Class I differentials have been determined for every county in the continental U.S. Current Class I differential levels were implemented January 1, 2000, with updates to the differentials in the three southeastern orders taking effect May 1, 2008. The proposed amendments would retain the $1.60 base differential and adopt modified location-specific Class I differential values. The amendments are intended to recognize the evolution of the dairy industry since 2000 and the increased cost of servicing the Class I market given current transportation costs and plant and producer locations.

This decision finds these amendments are necessary. The evidentiary record reflected testimony from a broad range of stakeholder views that updates are necessary in all five pricing subject areas to reflect current market conditions.

Impact on Small Businesses

An economic analysis has been performed on impacts the proposed amendments will have on industry participants, including producers and handlers. It can be found on the AMS website at *https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing.* The proposed amendments would be applied identically to all proprietary and cooperative handlers regulated by FMMOs, regardless of their size. The proposed amendments would implement prices that more accurately reflect current market conditions, providing for more orderly marketing for both small and large producers and handlers.

AMS considered alternatives to each of the recommended amendments. Over 49 days of hearing, dozens of witnesses from 9 industry stakeholder groups presented testimony and evidence on 21 proposals in the 5 pricing subject areas. AMS considered all evidence and testimony, including alternative proposals presented, in making its recommendations.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed, and no additional reporting requirements would be necessary.

This proposed rule does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, since the information is already provided, no new information collection requirements are needed, and the current information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

No other burdens are expected to fall on the dairy industry as a result of this rulemaking. This rulemaking does not duplicate, overlap, or conflict with any existing Federal rules.

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in all 11 Federal milk marketing areas. The hearing was held pursuant to the provisions of the AMAA, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Carmel, IN, from August 23–October 11, 2023, November 27–December 8, 2023, January 16–19, 2024, and January 29–31, 2024, pursuant to a notice of hearing published July 24, 2023 (88 FR 47396), a notice of reconvened hearing published November 6, 2023 (88 FR 76143), and a second notice of reconvened hearing, published December 29, 2023 (88 FR 90134).

The hearing was held to receive evidence on 21 proposals submitted by dairy farmers, handlers, and other interested parties. A total of 165 witnesses testified over the course of the 49-day hearing. Witnesses provided an overview of the complexity of the U.S. dairy industry and submitted 511 exhibits containing supporting data, analyses, and historical information.

The material issues, related to FMMO pricing formulas, presented on the record of hearing are as follows:

1. Milk Composition Factors
2. Surveyed Commodity Products
3. Class III and Class IV Formula Factors
4. Base Class I Skim Milk Price
5. Class I and Class II differentials

Summary of Testimony

Milk Composition

Two proposals seeking to amend the milk composition standards are being considered in this rulemaking. Proposal 1, submitted by the National Milk Producers Federation (NMPF) seeks to increase the skim component factors, with a 12-month implementation lag. The proposed standards are as follows: increase the nonfat solids assumption from 9.0 to 9.41 per hundredweight (cwt) of Class IV skim milk; increase the protein assumption from 3.1 to 3.39 per cwt of Class III skim milk; and increase the other solids assumption from 5.9 to 6.02 per cwt of Class III skim milk. Proposal 1 also contains an updating methodology that would automatically update the standards no more than once every three years once the nonfat solids component for the prior three years changes by at least .07 percentage points.

Proposal 2, submitted on behalf of National All-Jersey (NAJ), is identical to Proposal 1, except for the automatic update methodology. The proposal would update the standards annually using the previous year's weighted averages, with a 12-month implementation lag.

A witness from NMPF, a trade association representing dairy farmer-owned cooperative marketing associations throughout the United States, testified in support of updating the skim milk price milk component factors, as contained in Proposal 1. The witness explained how the U.S. dairy industry has undergone dynamic structural change since 2000, while FMMO product price formulas have

generally remained static. The witness stated dairy farmers have responded to component pricing by significantly increasing the butterfat, protein, and other solid levels in their milking herds. According to the USDA's National Agricultural Statistics Service (NASS), said the witness, average butterfat tests have increased 10.9 percent from 2000 to 2022, and USDA's Economic Research Service (ERS) reported average skim milk solids content of U.S. milk production increased 0.31 percent during the same period. The witness said 2022 FMMO average protein, other solids, and nonfat solids (NFS) in pooled milk were 3.39 percent, 6.02 percent, and 9.41 percent, respectively.

The NMPF witness asserted the static component levels contained in the formulas result in underpayments to producers in all FMMO's for the value of their Class I skim milk. Therefore, NMPF proposes to increase the milk composition factors in skim milk to 2022 levels. The NMPF witness analyzed 2013–2022 FMMO product prices and concluded adoption of Proposal 1 would have increased the Class III skim price by $0.80 per cwt and the Class IV skim milk price by $0.41 per cwt. An increase from the 2022-based skim milk component factors by the proposed 0.07 percentage point threshold level, the witness added, would have increased the Class III and Class IV prices by $0.14 and $0.07 per cwt, respectively.

Another NMPF witness testified the announced FMMO Class III and Class IV skim milk values do not reflect the current component levels of producer milk, resulting in announced prices being lower than actual market values. The witness said this leads to a misalignment of fluid and manufacturing milk, possibly leading to disorderly marketing conditions. This occurs because the Class I Mover skim milk price is calculated based on skim milk component levels based on 2000 levels, narrowing the difference between Class I prices and manufacturing milk prices (Classes III and IV) and resulting in more instances of price inversions and depooling.

Several NMPF dairy farmer witnesses testified in support of Proposal 1. The witnesses stated improved genetics and feed quality have caused component levels in the milk they market to increase. The witnesses stated component levels in the pricing formulas should be updated to reflect the additional protein produced.

An NMPF witness testified regarding their work as a business consultant with dairy farmers. The witness said dairy farming costs have been consistently increasing due to higher feed prices, overall inflation, interest rate increases, and rising costs associated with labor and environmental regulations. The witness estimated the average margin per cwt of milk produced over the past decade was less than $1, or approximately 4 to 7 percent of the average milk price. It was the witness's opinion that financially sustainable margins are necessary to avoid further consolidation in the industry.

An NMPF dairy farmer witness testified that monthly pay price volatility has increased since 2000. According to the witness, in 2000 their pay price varied $0.52, from a high of $12.95 to a low of $12.43. In the 12 months prior to August 2023, the witness said the variance was $7.46, ranging from $22.50 to $15.04, while costs continued to rise, including the price of corn and soybean meal more than doubling. The witness said that during the same 12-month period their milk output rose over 10,000 pounds. The witness attributed improvements in cow comfort, genetics, and feed quality to the increases in milk output and component levels but opined low component standards were depressing producer price differentials (PPDs) and discouraging milk from supplying the Class I market.

NMPF, in their post-hearing brief, offered additional support for Proposal 1. The brief credited significant advances related to animal genetics, farm management, and cow nutrition as contributing to rising skim milk component levels. NMPF reiterated hearing testimony regarding the static component levels in the formulas leading to a narrowing of the difference between Class I and manufacturing milk prices resulting in more price inversions, larger volumes of depooled milk, and resulting in disorderly marketing. NMPF stated higher skim milk component levels have value in the competitive manufacturing dairy market, which is the basis for determining Class I values. NMPF stated that increasing the skim milk components in the formulas to reflect current levels would recognize the current average value of producer milk used for manufacturing dairy products and result in a Class I price that properly reflects base milk values. Additionally, NMPF argued delayed implementation of updated component level factors is necessary because of dairy farmers' use of risk management programs. Such a delay would allow for the completion of most transactions placed prior to announcement of the change.

A Dairy Farmers of America, Inc. (DFA) witness, appearing on behalf of NMPF, testified the failure to delay an update in skim component standards would cause financial harm to dairy farmers, milk plants, end users, and others who entered into risk-management transactions. DFA is a dairy farmer cooperative and owns and operates 14 manufacturing plants which produce liquid whey, Italian cheese, skim milk powder, whole milk powder, American-style cheese, condensed milk, cream, nonfat dry milk, milk protein concentrate (MPC), sweetened condensed milk, and dry whey. The witness testified that failure to delay implementation would affect the basis, or the profit margin for milk being hedged. The witness testified that 35 to 45 percent of the U.S. milk supply was hedged by dairy farmers and there is a growing demand for risk management services among larger-sized dairies.

A witness representing the American Farm Bureau Federation (AFBF), a farmer advocacy organization with approximately 6 million members throughout the U.S., testified in support of Proposal 1. The witness estimated that raising the skim component standards would increase the Class I price by an average of $0.70 per cwt, based on 2022 data. Consequently, raising the skim component standards would help bring the Class I, III, and IV prices in alignment, reduce the frequency of negative PPDs, and reduce the incentives for depooling, which the witness said undermines orderly marketing. The witness stated that raising the value of the skim milk in the manufacturing classes for the skim and butterfat markets would reduce the incentive of manufacturing plants in the multiple component pricing (MCP) orders to pool milk, which would lower the producer's price and discourage milk from entering a milk deficit region. The witness testified that updating component standards would address some price misalignment issues and is preferred to prevent handlers from depooling.

AFBF offered support in their post-hearing brief stating Proposal 1 would more accurately define the market value of skim milk pooled on FMMOs. The brief asserted the resulting increase in Class I prices would reduce the incidences of price misalignment with Class III and IV prices, reduce the size and frequency of negative PPDs, and reduce depooling incentives. AFBF supported periodic adjustments to component levels, as contained in Proposal 1, to account for the continuing increases in the component levels, but specified these levels should

only be changed in the positive direction. In AFBF's opinion, more frequent updates, as contained in Proposal 2, would be disruptive.

A witness representing NAJ, an organization representing the interests of Jersey cattle breeders, testified in support of Proposal 2, which proposes the same milk composition levels as Proposal 1, with automatic annual updates. The witness said many factors have contributed to increased component levels, including improved genomics, increased use of gender-selected semen, and volume-based programs such as base/excess programs. The witness testified an annual update would provide improved accuracy because of the recently accelerated pace of component increases and would have better alignment with pricing between butterfat/skim and multiple component pricing FMMOs. Additionally, the witness stated a 1-year lag on implementing these updates would allow for greater risk management which is becoming increasingly more important to producers and processors.

NAJ's post-hearing brief reiterated their support for Proposal 2, arguing record evidence shows protein and other solids levels in producer milk have progressively and significantly increased since FMMO reform in the late 1990s. NAJ stated the trend of higher solids components in skim milk was expected to continue due to economic signals to producers from component values and improved production techniques. NAJ argued amendments of standard skim milk composition factors is necessary to help avoid periods of price inversions, depooling, undervaluing Class I milk, milk supply inefficiency, and disincentives to supply milk for Class I use. NAJ stated a change to the skim milk component levels should be announced at least 11 months in advance of implementation due to risk management practices used by producers and processors. NAJ argued annual updates better serve risk management practices because it would lead to smaller incremental changes and less adverse impact on risk management contracts with more than 12-months open interest at the time component changes are announced.

A witness representing Edge Dairy Farmer Cooperative (Edge), a Wisconsin-based dairy milk test verification cooperative, testified in support of Proposals 1 and 2. The witness recommended increasing the implementation lag to 15.5 months to support longer contract hedging. The witness was of the opinion the standard butterfat test also should be updated from 3.5 percent to 4.06 percent, the 2022 average butterfat for all markets combined as published by the USDA's AMS. According to the witness, this would more accurately reflect current butterfat levels and better align the butterfat to protein ratio used in the formula, ensuring more effective risk management tools, as farmers' ability to manage their gross pay price risk would improve.

Edge, in their post-hearing brief, reiterated hearing testimony that failure to adjust the butterfat level when updating skim component levels would cause disorderly milk marketing, as it undermines effective risk-management tools for dairy farmers. Edge argued that without the corresponding change, producers hedging milk revenue using risk management products based on Class III milk or Class IV milk prices, will tend to be under protected against the decline in butterfat prices. Edge added that changing the butterfat level would not affect handler obligations to the producer settlement fund, PPDs, or uniform producer prices.

A witness representing the International Dairy Foods Association (IDFA) testified in opposition to Proposals 1 and 2, stating that updating the component standards would increase the Class I skim price by $0.60 per cwt, a value that cannot be recovered in the marketplace. IDFA is a trade organization representing dairy manufacturers of milk, cheese, ice cream, yogurt, cultured products, and dairy ingredients. The IDFA witness testified consumers choose finished Class I products based on desired fat level, freshness, and price, not higher nonfat solids levels. The witness estimated that updating component levels in the formulas would result in manufacturing handlers in butterfat/skim FMMOs paying an additional $0.40 to $0.80 per cwt, even though the component levels of milk delivered to those plants was less than those proposed. The witness cited National Dairy Herd Information Association (DHI) data showing 2020 to 2022 average skim protein levels in butterfat/skim FMMOs below the levels contained in Proposals 1 and 2. The witness attributed the lower observed component levels to the fact that producer payments in these orders are made on the basis of the fat and skim content of their milk, leaving no financial incentive to produce higher component milk.

A witness from Saputo Cheese USA (Saputo), appearing on behalf of IDFA, also testified in opposition of Proposals 1 and 2. Saputo is a dairy processor and manufacturer operating 29 plants throughout the U.S. The witness said Saputo operates three plants located in the skim/fat orders, and in 2022 the average NFS level of milk received at those plants was 9.1070 percent, which is less than what is proposed in Proposals 1 and 2. The witness explained Saputo purchases skim solids to add to its skim milk in order to ensure the Class II products it manufactures contain the skim solids necessary to meet standard of identity requirements for those products. Updating the component levels in the formula would only result in Saputo paying for skim solids not received, but it would not lower the amount of skim solids Saputo must purchase, explained the witness.

A post-hearing brief submitted by IDFA reiterated its opposition to Proposals 1 and 2, arguing that increased component levels have no financial benefit or economic value to Class I handlers who would be the primary entities impacted by adoption of these proposals. IDFA stated the current FMMO system of pricing Class I milk on a skim/fat basis versus Classes II, III, and IV milk on a component basis does not create disorderly marketing.

The Milk Innovation Group (MIG) is a group of fluid milk processors and producers that market value added dairy based products. MIG's members include Anderson Erickson Dairy (AE), Aurora Organic Dairy (Aurora), Crystal Creamery, Danone North America (Danone), fairlife, HP Hood LLC (HP Hood), Organic Valley/CROPP Cooperative (Organic Valley), Shamrock Foods Company (Shamrock), Shehadey Family Foods LLC (Shehadey), and Turner Dairy Farms (Turner Dairy). Crystal Creamery is a California fluid milk processor producing Class I, II, and IV conventional and organic milk products. Danone is a food and beverage company operating seven plants in the U.S. Fairlife is a fluid milk processor of ultra-filtered lactose free milk, and other high protein products. Organic Valley is a dairy farmer-owned organic cooperative producing more than 30 percent of the organic milk sold in the U.S.

Seven witnesses representing MIG, including witnesses from HP Hood, Shehadey, Saputo, Shamrock, AE, Turner Dairy, and Aurora, testified in opposition to Proposals 1 and 2. HP Hood is a fluid milk processor operating five ESL plants and four high-temperature, short-time (HTST) plants in the Northeast and California. Shehadey operates four manufacturing plants in California, Nevada, and Oregon, producing Class I and Class II products. Shamrock is a fluid milk

processor of HTST and ESL products with processing facilities in Arizona and Virginia, and a 20,000-head dairy farm located in Arizona. AE is an Iowa fluid milk processor producing both Class I and II products. Aurora is a vertically integrated organic milk supplier with four organic dairy farms located in Colorado and Texas. Turner Dairy is a small fluid milk processor with full or partial ownership of two fluid milk plants, as well as a standalone Class II plant, all located in western Pennsylvania.

Six witnesses testified their plants regularly receive milk with components below the proposed levels. One witness offered that component levels received ranged from 3.09 to 3.63 percent protein, 5.83 to 6.10 percent other solids, and 8.92 to 9.65 percent NFS. MIG members testified that increasing the component levels in the formulas would increase their raw milk costs, requiring them to pay for milk components not received. One witness stated that adoption of Proposals 1 and 2 would increase costs between $0.60 and $0.75 per cwt. All MIG witnesses claimed that fluid milk processors, even if they did receive higher component milk, are unable to convert those higher components into additional market revenue as Class I products are sold on a volume, not component basis.

Another MIG witness testified on a survey conducted of MIG members plus two additional large grocery retailers who own their own fluid milk processing plants. According to the witness, using component data from 32 out of the 36 plants surveyed, these plants frequently received milk with components below the proposed levels. As data was confidential, no specific data was provided. The witness also noted the data showed component levels changed due to seasonality and geographics, demonstrating inconsistent levels received by plants. The witness testified the adoption of Proposals 1 or 2 would raise Class I prices and make it more challenging for these plants to recover costs. Should USDA decide to change the standard component levels in the pricing formulas, the witness testified component minimums should be used instead of averages because FMMOs are meant to provide minimum prices.

A post-hearing brief filed on behalf of MIG argued it would be disorderly for Class I fluid milk processors, the only mandatory participant of FMMOs, to be forced to pay for component levels regardless of what is actually received. MIG opined consumers do not value additional skim component levels in fluid milk products, therefore Class I processors are unable to recoup additional revenue out of the market. MIG was of the opinion no record evidence was provided at the hearing that the current skim component formula factors are causing disorderly marketing and added that although they oppose Proposals 1 and 2, if any part of these proposals are adopted there should be a 12-month implementation delay.

A witness representing the CME Group (CME) testified to explain various dairy risk management tools offered through the exchange, including futures and options contracts. The witness explained the CME is a derivatives marketplace offering a range of futures exchanges to meet private risk management needs. The witness explained a futures contract is a legally binding agreement to buy or sell a standardized asset on a specific date or during a specific month. An option on a futures contract is the right, but not the obligation, to buy or sell the underlying futures contract at a predetermined price on or before a given date in the future. The witness stated 97.43 percent of contracts in the futures and options market are for 12-month periods, and in a previous change to futures contracts there was an 18-month lag on implementation to be beyond open interest. The witness testified that Dairy Revenue Protection (DRP) is one of many programs that rely on CME markets and advocated USDA to consider futures and options markets when establishing implementation plans.

In its post-hearing brief, CME reiterated its neutrality on all proposals under consideration. They stated any change modifying the current Class III and Class IV formulas would be considered a material change affecting current contracts. CME stressed the importance of sufficient and transparent notice of any changes.

A post-hearing brief was submitted on behalf of Select Milk Producers (Select), a dairy-farmer owned cooperative which owns and operates eight processing plants in Texas, New Mexico, and Michigan, manufacturing ESL fluid milk products and a variety of cheese, butter, and NFDM products. Select offered support for Proposal 1 and took exception to the assertion there is no value in higher protein levels in Class I products, as it is belied by the success of specialty fluid milk products such as fairlife, and the higher milk solids required for California fluid milk. Although Select supported adoption of Proposal 1, they do not support a delay in implementation, nor the annual update as contained in Proposal 2.

Lamers Dairy Inc. (Lamers), a Wisconsin based HTST fluid milk processor, submitted a post-hearing brief in opposition to Proposals 1 and 2. Lamers stated component levels can vary both regionally and from farm to farm. Lamers opined that USDA is statutorily required to conduct a study of component levels before any change could be made and argued adoption of Proposals 1 and 2 should not be considered.

New Dairy OPCO LLC (New Dairy), a fluid milk processor operating four fully regulated distributing plants (three of which are located in the southeastern U.S.), submitted a post-hearing brief in opposition to Proposals 1 and 2. New Dairy offered support for arguments made by IDFA and MIG that fluid milk processors would be unable to recoup the additional cost of components should Proposals 1 or 2 be adopted. They purport that charging fluid milk processors for components not actually received would be disorderly. New Dairy said raising component levels in the formulas would harm its southeastern plants as they pay on a skim/fat basis which provides no incentive to producer to increase components to match the national average.

In its post-hearing brief, NMPF opposed the annual updating feature contained in Proposal 2. NMPF stated that by limiting changes to the standard component levels to a periodic basis and relying on 3-year weighted average, Proposal 1 is more likely to produce accurate component values and avoid disruption from more frequent changes.

Surveyed Commodity Products

This rulemaking proceeding considers four proposals, and a modified proposal submitted during the hearing, that would add or remove a variety of products in the DPMRP survey, which are then reported in the National Dairy Product Sales Report (NDPSR) and used to establish FMMO classified prices. The proposals are as follows:

Proposal 3, submitted by NMPF, seeks to eliminate the Cheddar cheese barrel price from the cheese price formula.

Proposal 4, submitted by AFBF, seeks to add Cheddar cheese 640-pound block price series to the cheese price formula.

Proposal 5, submitted by AFBF, seeks to add unsalted butter to the butterfat and cheese price formulas.

Proposal 6, submitted by the California Dairy Campaign (CDC), seeks to add a price series for mozzarella to the cheese price formula.

Edge offered a proposal modification during the hearing to adopt different weighting methodology which would

reweigh 40-pound blocks and 500-pound barrels in the DPMRP survey by all U.S. cheddar block and barrel production volumes.

NMPF witnesses from Foremost Farms USA (Foremost), Ellsworth Cooperative Creamery (Ellsworth), Land O'Lakes (LOL), and DFA testified in support of Proposal 3. Foremost is a cooperative with 850 members located in Wisconsin, Michigan, Iowa, Minnesota, Indiana, Ohio, and Illinois, and operating eight manufacturing plants producing cheese and butter.

Ellsworth is a Wisconsin-based cheese manufacturer producing a significant volume of barrel cheese and a variety of specialized cheeses and cheese curds from 250 dairy-farmer members. LOL is a dairy farmer-owned cooperative with more than 1,000 dairy farmer members, primarily producing butter and cheese.

The witnesses explained the current cheese price formula includes both block and barrel cheese in the computation. They asserted the cheese price formula provides for orderly marketing if the difference, known as the ''spread,'' in the respective market prices of blocks and barrels remains close to the assumed $0.03 per pound cost difference, which occurred from 2000 to 2016. However, since 2017 the spread between the block and barrel prices has been volatile. One witness stated the weighted average spread published in the weekly NDPSR during January 2017 through July 2023 was $0.120 per pound, with a much wider and more volatile range per pound. The LOL witness opined that the DPMRP survey could continue to include and publish prices of 500-pound barrel cheese without necessitating its inclusion in the Class III protein price calculation.

An NMPF witness testified the CME block cheddar price is used as a pricing index for most cheese produced in the U.S., including cheddar, 40-pound block, 640-pound block, mozzarella, other American-type cheese, and other cheese including cream cheese, and Hispanic cheese. They estimated 90 percent of natural cheese produced in the U.S. is sold using the CME 40-pound block cheddar price as a pricing index. The witness estimated the CME barrel cheese price is used to price only about 9 percent of total domestically produced natural cheeses, including barrels themselves. They said DPMRP survey volumes of barrel cheese between 2013 and 2022 ranged from 44 to 52 percent, resulting in an overrepresentation of 500-pound barrels compared to the actual volume of cheese that is priced off of barrels. The witness testified that since 2017, the significantly wider and increasingly volatile block-barrel spread has caused instability in the cheese market. Consequently, the witness said, dairy farmer revenue has been reduced as the over representation of 500-pound barrels lowered the Class III price. The Foremost witness estimated the undervaluation represented $2 billion since 2017, opining the value would have been greater if not for the large volume of Class III milk not pooled in 2020 and 2021.

The NMPF witness testified eliminating 500-pound barrel prices from the Class III price would create more orderly marketing in FMMOs by reducing the financial uncertainty for dairy producers and manufacturers and ensuring the cheese price in the protein component formula represents the single commodity cheddar cheese product. The witness described how barrel cheese manufacturers are harmed when they must account to the pool at an FMMO cheese price higher than the revenue generated from barrel cheese product. The witness said eliminating the 500-pound barrels would have increased the Class III price by $0.41 per cwt, using average product prices for 2017 to 2022.

An NMPF witness testified that removing 500-pound barrels had been addressed in prior rulemakings, but denied by USDA in the rulemaking. However, current market conditions have significantly changed, necessitating a re-evaluation. The witness attributed the increased volatility in the block-barrel price spread since 2017 to a variety of factors, including increased 500-pound barrel production capacity that may be due to increasing values of its white whey by-product.

NMPF witnesses testified eliminating 500-pound barrel cheese from the protein component price (PCP) formula would still provide adequate volume of cheddar cheese for price discovery purposes as 40-pound block cheese surveyed represents approximately 16 percent of total U.S. natural cheddar cheese production. The witness also said this methodology change would bring the cheese price into conformity with the price for butter, NFDM, and dry whey, which utilize only one surveyed product for price discovery purposes.

The witness testifying on behalf of Ellsworth stated 40-pound blocks and 500-pound barrels are not interchangeable products. The witness said while 40-pound block cheddar has many markets and uses, 500-pound barrel cheddar is used for processed cheese, a market driven by few processors and purchasers. As a result, the witness said, surveying barrel cheese prices skews the FMMO cheese price towards a smaller market which is not representative of the rest of the cheese market. The witness estimated the volatility in the block-barrel spread since 2017 cost Ellsworth producers $0.84 per cwt. The witness said barrel cheese manufacturers would adjust to the elimination of barrel prices from the survey and eventually transition to prices based on the 40-pound block cheese price.

Witnesses representing IDFA, Leprino Foods Company (Leprino), and Associated Milk Producers, Inc. (AMPI) testified in opposition to Proposal 3. Leprino operates nine plants in the U.S., manufacturing mozzarella cheese, whey products, and NFDM. AMPI owns and operates eight manufacturing plants processing cheese, butter and powdered dairy products from member farms in Wisconsin, Minnesota, Iowa, Nebraska, South Dakota, and North Dakota.

The witnesses said sales of both block and barrel cheddar cheese are robust and each play a significant role in setting the market value of cheddar cheese. They argued eliminating 500-pound barrels would reduce by more than half the cheese market price contained in the survey and would result in a distorted picture of the total commodity cheddar market. The witness said opposition to removing barrels was not related to the presumed effect on the Class III price as the NDPSR weighted average cheese price (reflecting block and barrel cheese) was higher than the 40-pound block price in 9 of 14 years from 2009 to 2022. One witness opined additional cheddar block plant capacity is coming on-line in the next couple of years, increasing 40-pound block volumes, and would reduce the block-barrel spread to historical levels under normal supply-demand behavior.

The IDFA witness speculated cheddar barrel manufacturers may opt not to pool milk if the barrel price is no longer surveyed because they would be unable to garner sufficient market revenue in order to account to the pool and the Class III price.

Two Leprino witnesses testified eliminating 500-pound barrels from the Class III price formula removes the product most closely reflecting the supply and demand balance. They were of the opinion that removing 500-pound barrels would both shrink the survey volume and likely result in greater production of cheddar blocks as a way to clear the market. The witnesses testified this would add volatility to the block market, cause unnecessary stress to the U.S. marketplace, and make U.S.

cheese a less attractive option for global buyers.

The Leprino witnesses said dropping 500-pound barrels from the survey would create a presumption within the Class III formula that all cheese, including barrels, would then be priced off blocks. The witnesses asserted barrels and blocks have different supply and demand functions, and eliminating barrels from the Class III formulas would force barrels to be priced off blocks, adding dysfunction to the barrel market. The witnesses were of the opinion barrels are the market-clearing cheese, and instead 40-pound blocks should be eliminated from the price formula to be more consistent with the minimum pricing provisions.

In its post-hearing brief, NMPF reiterated testimony regarding price differences between 40-pound blocks and 500-pound barrels becoming more volatile since 2017. Historically, NMPF wrote, using both block and barrel prices in the Class III pricing formula increased the volume of cheddar cheese reported in the NDPSR. However, the increased price spread has caused instability in the cheese market and reduced revenue for dairy farmers as the barrel price is a disproportionately large share when compared to its volume in the cheese market. NMPF estimated 90 percent of the natural cheese produced in the U.S. is priced using the CME 40-pound block price, while the remaining is priced off of the CME barrel cheese price. As a result, NMPF wrote, the Class III milk price has been undervalued and lowered producer revenue.

Leprino submitted a post-hearing brief reiterating the important balancing function barrels provide and opined removing them would push 40-pound blocks into the balancing role and would increase price volatility for cheddar blocks.

Select submitted a post-hearing brief in support of Proposal 3, arguing 500-pound barrels no longer represent the commodity cheddar market and 40-pound blocks are an appropriate commodity to establish the protein price. According to Select's brief, current formulas dramatically over weights the price of barrels relative to the markets actual use barrels and the cheese priced off of them.

The AFBF submitted a post-hearing brief in support of Proposal 3 reiterating hearing testimony that barrels represent roughly 50 percent of the NDPSR volume but is used to set prices for only 10 percent of the cheese in the U.S. market. The AFBF stressed use of barrels in the cheddar cheese price formula creates a price not representative of the value of 90 percent of cheddar cheese produced.

IDFA, in their post-hearing brief, opposed Proposal 3 as they argued its adoption would make 500-pound barrel production uneconomical, resulting in barrel makers going out of business or switching to block production which would destabilize the block market. IDFA wrote that 40-pound blocks and 500-pound barrels serve materially different functions in the market and the failure to include both in the survey would distort the commodity cheddar cheese market.

NAJ submitted a post-hearing brief in opposition to Proposal 3. NAJ cited hearing evidence showing the market price of block and barrel cheese has diverged significantly since 2017, with barrel cheese priced about $0.11 per pound less than block cheese from 2017–2022. NAJ stated blocks and barrels have different uses, different buyer markets, and limited substitutability. With an expected increase in block production in the coming years, NAJ wrote, there may be many months in which barrels are more per pound and should remain part of the cheese price formula.

A witness representing the AFBF testified in support of adding 640-pound cheddar blocks to the Class III formula, as contained in Proposal 4. The witness said adding 640-pound blocks would expand the volume of cheese surveyed and better reflect U.S. block and barrel production volumes. The witness was of the opinion there has been a pronounced production shift from 40-pound blocks to 640-pound blocks and adding 640-pound blocks would provide more survey volume to avoid future rulemaking to address the dwindling 40-pound block survey volume. The witness testified that 40-pound and 640-pound blocks are largely interchangeable in price, use, and storage, and therefore it is appropriate those prices be reflected in the Class III price.

A witness representing IDFA testified in opposition to Proposal 4. The witness said the DPMRP cheese survey encompassed more than 1.34 billion pounds of sales in 2022, divided almost evenly between 40-pound blocks and 500-pound barrels. The witness testified the data set is sufficient to determine prices in the market and, since 640-pound blocks typically trade off the 40-pound block price, its addition would provide little additional price discovery information. The witness opined that only a small percentage of the 640-pound block market would meet survey specifications because of the nature of how the product is manufactured and sold.

The two Leprino witnesses argued it would be inappropriate to add 640-pound blocks as the market is largely make-to-order and the lack of equipment to handle 640-pound blocks limits sales to a narrow group of buyers. The witnesses noted the 640-pound block market is balanced through the cutting down of 640-pound blocks into 40-pound blocks, so the 40-pound block cheddar market is already reflected in its pricing.

A witness representing Glanbia PLC (Glanbia), testified in opposition to Proposal 4. Glanbia owns four dairy plants in Idaho and partially owns two joint venture plants in New Mexico and Michigan, processing 34 million pounds of milk daily into barrel cheese, block cheese, whey protein concentrates, proprietary protein blends, and lactose. The witness testified Glanbia plants manufacture 40-pound and 640-pound-blocks, both priced off the CME 40-pound block price and opined that adding 640-pound blocks would not add new information to the survey.

A witness representing the Wisconsin Cheese Makers Association (WCMA), whose 81 members include cheese manufacturers making 40-pound blocks, 640-pound blocks, and 500-pound barrels, testified in opposition to Proposal 4. The witness testified the industry uses the 40-pound block price to price 640-pound blocks, and since 40-pounds blocks are already used in the protein formula, adding 640-pound blocks would add no new price information.

A DFA witness representing NMPF, testifying in opposition to Proposal 4, said the 40-pound block volume provides an adequate dataset and the sole inclusion of 40-pound blocks is sufficient for cheese price discovery, making adoption of Proposal 4 unnecessary. The witness stated the daily CME cash block cheese market is widely recognized by market participants as heavily influencing the price of cheese. The witness concluded that because annual CME block cheese traded volumes are not as large as NDPSR block survey volumes, the volume of 40-pound blocks reported in the NDPSR is more than adequate to determine the FMMO cheese price. The witness testified that incorporating 640-pound blocks into the NDPSR data set could promote the same disorderly market conditions currently observed with the inclusion of 500-pound barrels.

The AFBF reiterated their support of Proposal 4 in their post-hearing brief. The AFBF indicated 640-pound blocks are priced identically, or nearly

identically, to 40-pound blocks, and are a standardized commodity cheddar cheese product. Including the 640-pound blocks in the NDPSR survey, they argued, would help make the survey more robust.

Select, in their post-hearing brief, expressed support for Proposal 4 agreeing with proponents that its inclusion would increase DPMRP survey volume. Select mentioned that with new cheese processing capacity starting in upcoming years in Minnesota, New Mexico, Michigan, and Texas, 640-pound blocks would become a larger proportion of the commodity cheddar market and it would be prudent to incorporate their prices and volume in the survey.

IDFA reiterated opposition to Proposal 4 in its post-hearing brief. IDFA highlighted evidence describing how 640-pound blocks are typically made to customer order as there is only a small number of cheese buyers who are able to purchase and process them. Since manufacturers of 640-pound blocks often balance the 640-pound block market by cutting them down to 40-pound blocks, IDFA said no new price information would be gained from including 640-pound blocks in the survey.

WCMA also expressed opposition to Proposal 4 in their post-hearing brief and wrote that because 640-pound blocks do not have a unique price discovery mechanism, they would add no new price information to the formulas.

A witness representing the AFBF testified in support of Proposal 5, seeking to add unsalted butter to the DPMRP butter survey. The witness said because of the growing volume of unsalted butter production and use in the U.S., the DPMRP salted-only butter price collection increasingly underrepresents the value of U.S. butter. According to the witness, the amount of butter captured by the NDPSR as a percentage of total butter production has been declining, from 16 percent in 1999 to 9.4 percent in 2022. The witness expected this trend to continue without the addition of unsalted butter.

Citing USDA voluntarily graded salted and unsalted butter volumes, the AFBF witness said one reason for declining butter survey volumes is the increase in U.S. unsalted butter production. The AFBF witness testified the exclusion of unsalted butter is unnecessarily restrictive for the purposes of the DPMRP survey. The witness cited U.S. butter export data showing 2,000 metric tons exported in 2000, to over 65,000 metric tons in 2022, estimating almost all the exports were unsalted. The witness said incorporating unsalted butter prices into the FMMO butterfat formula would make the survey more representative of the evolving butter market, allow for better market transparency, and provide for more orderly marketing of butter and milk. The witness claimed salted and unsalted butter are production substitutes, as the same production line can be used for both without substantial interruption. The witness clarified Proposal 5 is not intended to change the current 80 percent butterfat reporting standard for butter, and therefore exported unsalted butter at 82 percent butterfat would continue to be excluded.

A witness representing CDC expressed support for Proposal 5, without additional testimony. The CDC represents dairy farmers throughout California and is a state chapter of the National Farmers Union.

A witness representing IDFA testified in opposition to Proposal 5. The witness testified there is no uniform specification for unsalted butter, so it is impossible to derive a uniform price for purposes of an FMMO pricing formula. The witness explained unsalted butter does not store as well compared to salted butter, rendering unsalted butter less capable of providing useful uniform price information. The witness also testified unsalted butter tends to be priced off the CME Grade AA salted butter price, and therefore does not bring any new pricing information. As substantial quantities of unsalted butter are exported through premium-assisted sales, which would not be included in the DPMRP survey, emphasizing unsalted butter should not be relied on for determining the market price of butter. Moreover, the witness considered the current volume of salted butter reported in the DPMRP to be a robust quantity of butter sales.

A witness representing the Dairy Institute of California (DIC) testified in opposition to Proposal 5. The DIC is a trade association, representing fluid milk and dairy product processing plants in California. The witness asserted most unsalted butter is 82 percent butterfat and exported and should be considered substantively different from domestically consumed butter which contains 80 percent butterfat. The witness referenced a lack of clarity on how subsidies on exported butter would be handled in the product price reporting as another reason for their opposition.

A California Dairies, Inc. (CDI) witness, representing NMPF, testified in opposition to Proposal 5. CDI is a California dairy farmer-owned cooperative with 258 members producing and marketing 41 percent of California's total milk production and operating six butter and milk powder manufacturing facilities in the state. The witness disagreed with the assertion that salted butter at 80 percent butterfat no longer represents an adequate survey volume. The witness testified CDI manufactures both types of butter, and unlike salted butter, unsalted butter is manufactured exclusively for customer order. The witness argued sales of the two types of butter are not interchangeable. The witness stressed the addition of salt allows salted butter to be stored for long periods, making it a market clearing product, whereas the nature of unsalted butter requires it to be sold and consumed in a significantly shorter period of time. The witness was of the opinion introducing unsalted butter into the survey may result in volatility in the relationship between salted and unsalted butter similar to the current volatile relationship between 40-pound block and 500-pound cheddar barrels. The witness said it was preferable to have one product generate the singular commodity reference price for purposes of calculating the minimum FMMO prices.

In post-hearing briefs, the AFBF offered additional support for Proposal 5, stating the growing volume of unsalted butter production and use in the U.S. markets results in a salted-only butter price collection in the NDPSR survey which increasingly underrepresents the value of U.S. butter. The AFBF argued the declining trend in butter survey volume as a percent of actual production would continue, as butter survey volume has fallen from 16 percent of total production in the 1999 to 9.4 percent in 2022.

Select expressed opposition to Proposal 5 in its post-hearing brief. Select argued that despite the growth of unsalted butter products, it should not be included in the survey because it lacks a uniform specification, is typically produced for special orders, has no active commodity market, is often made with 82 percent butterfat versus 80 percent, and is viewed as a higher-value product.

IDFA's post-hearing brief reiterated their opposition to Proposal 5 stating the Grade AA salted butter survey volume is robust and the product is traded on the CME. IDFA wrote that a majority of unsalted butter is exported through government or private assisted sales, such as Dairy Export Incentive Program or Cooperatives Working Together, which would disqualify such sales from being reported. IDFA also stated unsalted butter does not store as

well as salted butter, making it more likely to be made to order to a particular buyer's specifications.

A witness representing the CDC testified in support of adding mozzarella prices to the FMMO cheese price, as contained in Proposal 6. The witness was of the opinion adding mozzarella would make the FMMO Class III price more reflective of all U.S. cheese production. The witness asserted that because the volume of mozzarella production significantly exceeds cheddar production it should be reflected in the FMMO cheese price to improve price transparency and increase dairy farmer revenue. The CDC witness also stated mozzarella production is the largest category of cheese produced today and deserves a standard specification determined by the volume of mozzarella produced today.

The CDC witness proposed adding mozzarella to the FMMO protein price based on the Van Slyke cheese yield formula, a formula for predicting cheddar cheese yields from milk on the basis of its fat and casein content. The witness submitted numerous USDA Specifications of Mozzarella Cheese for the Department to consider when determining an acceptable moisture and fat content of mozzarella cheese to be surveyed. The specification detailed requirements for six variations of mozzarella types in four forms (loaf, sliced, shredded, or diced). The witness testified that 5 to 6-pound loaves of mozzarella would be representative of a wholesale commodity mozzarella product and reasonable for inclusion in the survey.

A California dairy farmer testified in support of Proposal 6. The witness said including mozzarella in the survey would create a Class III price that more accurately reflects the value of the current cheese market. The witness attributed the ongoing decline in the number of California dairy farms to negative margins and price volatility and stressed the urgency in capturing the additional value of mozzarella. A Wisconsin dairy farmer also supported inclusion of mozzarella for similar reasons.

A witness representing IDFA testified in opposition to Proposal 6. The witness described the difficulty in selecting appropriate mozzarella product specifications, yield assumptions, and manufacturing costs to include in the formulas whose factors currently reflect only cheddar production. The witness also testified the commercial mozzarella cheese market contains wide product variability, including varying fat and moisture parameters demanded by mozzarella customers. The witness testified that unlike bulk cheddar products, mozzarella is not a market-clearing product, is often sold to meet the customer specifications, is not traded on the CME, and is not storable for extended periods.

Witnesses from Leprino and Glanbia testified in opposition to Proposal 6, asserting the proposal lacked critical details making it difficult to interpret and evaluate. The witnesses explained the equipment, production, and yield difference between mozzarella and commodity cheddar. The witnesses said Proposal 6 does not define the type of mozzarella to be surveyed or how USDA should address the diversity of mozzarella cheese types and packages. The witnesses stated significant volumes of mozzarella are manufactured into value-added forms, whether as shred, string, or smaller retail or foodservice loaves by the primary manufacturer. The witnesses also noted most mozzarella is not market-clearing and is stored in refrigerated form with limited shelf life reducing its role as a market clearing product. The witnesses added that the volume of mozzarella production sold by the primary manufacturer in bulk format is comparatively small, in contrast to cheddar, in which most shredding, processing into consumer packaging, and conversion to other forms is performed by different companies rather than the original manufacturer. The witnesses opined cheddar remains the most appropriate Class III cheese product.

Leprino reiterated their opposition to Proposal 6 in their post-hearing brief. Leprino argued mozzarella cheese is a grouping or collection of similar products with diverse specifications, and that the assumption mozzarella production volume represents a single defined bulk product is incorrect. Leprino further stated mozzarella has different manufacturing processes, costs, and product yields. Therefore, if mozzarella was added to the Class III pricing formula, the formula would become substantially more complicated with little incremental benefit.

A Foremost witness, testifying on behalf of NMPF, testified in opposition to Proposal 6, urging USDA to only utilize one commodity price series to represent each of the four dairy prices: cheese, butter, NFDM, and dry whey, to ensure orderly marketing. The witness noted the many mozzarella composition types, and purported deriving a 40-pound block cheddar equivalent price would be difficult. The witness added mozzarella manufacturing costs are different and no data exists to determine how those costs should be reflected in the cheese make allowance. The witness said including mozzarella pricing into the protein price calculation would not enhance price discovery as mozzarella prices already move with the 40-pound cheddar market. Other NMPF witnesses testified to the appropriateness of limiting the cheese price to one survey product, cheddar. Witnesses representing the AFBF and WCMA opposed the inclusion of mozzarella due to the lack of standard format that could be surveyed.

Select's post-hearing brief opposed Proposal 6 because no workable framework for incorporating mozzarella into the price formula was provided on the record.

IDFA's post-hearing brief reiterated their opposition of Proposal 6 as mozzarella lacks uniformity in compositional specifications and yields and is not traded on the CME. IDFA wrote the U.S. Food and Drug Administration (FDA) Standards of Identity provide four different variants of mozzarella cheese, with a wide variety of fat and moisture levels. IDFA also stated that while proponents advocated use of the Van Slyke formula to determine yields, the record lacked evidence as to how the formula should be revised to incorporate mozzarella cheese.

WCMA opposed Proposal 6 in their post-hearing brief. WCMA members argued that there is no FDA Standard of Identity for mozzarella and are concerned over the vast variety of forms and functionality of each mozzarella manufacturer.

A witness testifying on behalf of the CME offered information regarding its dairy futures and options markets which utilize FMMO prices. The witness did not appear in support or in opposition to any proposal under consideration. The witness testified that the CME dairy product portfolio, which began in 1996, includes Class III and Class IV milk futures and options, cash-settled cheese, 40-pound block cheese, cash-settled butter, NFDM, and dry whey. The witness said the relationship between Class III and Class IV milk futures can serve as a mechanism to manage both input and output costs and provide the dairy trading community with an opportunity to provide liquidity to the market while managing risk. The witness testified any changes to FMMO formulas, or underlying DPMRP survey methodology could result in a material change to the valuation of the contracts. A post-hearing brief filed by CME reiterated its hearing testimony and stressed that the Department consider the impact to futures and options

markets when determining the implementation timeframe for any FMMO price formula changes.

A witness representing Edge offered the modified proposal that would reweight 40-pound blocks and 500-pound barrels by U.S. production volumes, not DPMRP survey volumes. The witness said this alternative weighting methodology would reduce the weight of barrel cheese as most cheddar cheese is manufactured into blocks. The witness explained that since a significant volume of block cheddar cheese does not qualify for inclusion in the NDPSR, barrels have a weight disproportionate to their true market share of the cheddar market. The witness was of the opinion the protein price should primarily reflect the block cheddar cheese market as it is estimated 70 to 75 percent of all cheddar cheese is produced into 40-pound or 640-pound blocks.

The Edge witness predicted that the block-barrel spread could invert in 2025 due to the growth of block cheese production. The witness expects cheese manufacturers who can make either blocks or barrels will react to profitable opportunities, thus reducing the spread between block and barrel prices by altering their production schedules. The witness argued that, given the anticipated trends over the next 3 to 5 years, it would be more prudent to reduce the weight of barrels today and revisit the topic of removing barrels in 5 years.

Edge reiterated their support for the weighting methodology in its post-hearing brief, as an alternative to eliminating barrel cheese or adding 640-pound blocks to the survey. Edge explained that, in practice, the Department would survey all barrel cheese production volume on an annual basis, including forward contracted cheese volumes, to determine the percentage of barrel cheese produced in relation to the NASS total U.S. cheddar cheese production estimates. Edge proposed the percentage be rounded to the nearest 5 percent, and the inverse would be assumed to represent block production. This calculated weight would be announced by September 15 and be applicable for the following calendar year. Survey prices would then be weighted by these percentages to determine weighted average cheese prices.

IDFA, in their post-hearing brief, opposed Edge's modified proposal, arguing that it ignores market clearing, minimum pricing principles. IDFA opposed the idea of Class III prices being predominantly determined through a 40-pound block cheddar price.

A post-hearing brief submitted by NMPF opposed Proposals 4, 5, 6, and Edge's modified proposal on the grounds the proposals perpetuate the problem Proposal 3 seeks to fix, which is to have only one product surveyed to determine a wholesale commodity price.

Class III and Class IV Formula Factors

a. Make Allowances

Proponents submitted three proposals to amend the make allowances in the Class III and IV formulas. Proposal 7, submitted by NMPF, seeks to update make allowances to the following: cheese, $0.2400; dry whey, $0.2300; NFDM, $0.2100; butter, $0.0210. WCMA and IDFA submitted Proposal 8 and identical Proposal 9, respectively, to update make allowances as described in the below table. The proposals contain a four-year implementation schedule with 50 percent of the increase implemented in year 1 and the remaining 50 percent implemented evenly across the remaining 3 years.

IDFA/WCMA Proposed Make Allowances

Product	Year 1	Year 2	Year 3	Year 4
Cheese	$0.2422	$0.2561	$0.2701	$0.2840
Dry Whey	0.2582	0.2778	0.2976	0.3172
NFDM	0.2198	0.2370	0.2544	0.2716
Butter	0.2251	0.2428	0.2607	0.2785

A former University of Wisconsin economics professor testified regarding separate manufacturing cost surveys they conducted on behalf of USDA and IDFA in 2021 and 2023, respectively. Each survey collected data submitted voluntarily from plants producing commodity cheddar cheese, dry whey, butter, and NFDM. The witness previously conducted similar surveys used by the Department in determining make allowance levels. The witness did not testify in support or opposition to any manufacturing allowance proposals under consideration.

The witness explained that only plants manufacturing commodity products meeting DPMRP product specifications were eligible to participate. As plant participation was voluntary, the sample of plants and respective volumes varied by product and between surveys, with increasing cost variation between plants over time. The witness noted more observed cost variation across plants can occur due to newer automation technology employed in some plants, varying utility costs over time, and economies of scale achieved by some plants who negotiate input costs. The witness explained that dairy-based raw product costs, such as raw milk or purchased cream, are excluded, while costs of non-dairy ingredients needed to transform the raw milk into a manufactured product, such as salt and enzymes, are collected and included in the survey results. The witness said costs, such as labor and utility, through the product-packaging stage are incorporated, but post-packaging costs, such as long-term storage or distribution and sales costs, are not. The witness explained an economic depreciation factor, not consistent with taxable depreciation, is incorporated to cover consumed capital, and the asset's return on investment is included to capture opportunity costs.

The witness explained two different methodologies used for allocating costs in multi-product plants that could not be associated with a specific product (unallocated costs). The witness said the 2021 survey utilized a degree-of-transformation factor to allocate costs based on degree of transformation raw milk must undergo in order to be manufactured into the wholesale product. Transformation factors were assigned subjectively, based on knowledge of manufacturing processes. As a result, the witness said, unallocated costs were weighted towards heavily transformed products, such as NFDM, while products undergoing less transformation, for example, butter, were assigned a lower portion of the unallocated costs. Due to questions from the industry regarding this methodology, the witness said the 2023 survey reverted to allocating costs on a solids basis, a methodology more familiar to industry stakeholders. The

witness said the 2021 survey showed more variation of costs when compared to current make allowance levels, ranging from an 18 percent decrease in butter costs to a 75 percent increase in NFDM costs. The 2023 survey results revealed a more consistent cost change when compared to current FMMO levels, ranging from a 65 percent increase in NFDM costs to a 72 percent increase in butter costs.

The witness attributed much of the survey result differences to the plant samples. For NFDM, the 2021 survey had 27 participating plants, whereas the 2023 survey had 15, with larger average volume per plant, according to the witness. For cheese, the 2023 survey included 18 cheddar cheese plants compared to 10 in the 2021 survey, and the witness elaborated that the cheese plants surveyed were much larger on average and represented a significant proportion of the NDPSR volume when compared to the 2021 survey.

The witness testified the data on butter highlighted the importance of sample composition. Both surveys sampled a similar numbers of butter plants, 13 in 2023 and 12 in 2021, and represented roughly the same total volume. However, the witness stated the 2023 survey had more variation in production volumes whereas in the 2021 survey, butter plants were more similarly sized. Finally, the witness testified the dry whey surveys had similar numbers of participating plants, 9 in 2023 and 8 in 2021, but the surveyed volume in the 2023 survey was nearly 50 percent more than that contained in the 2021 survey.

NMPF offered Proposal 7 as one option for amending FMMO make allowance levels. Eleven NMPF witnesses, representing the manufacturing interests of cooperatives, testified in support of Proposal 7. The witnesses testified the current FMMO make allowances do not resemble manufacturing costs currently experienced in their plants. The witnesses provided detailed testimony on the impact of inadequate make allowances, which consisted of similar themes. First, they were of the opinion inadequate make allowances cause the FMMOs to overvalue raw milk. Consequently, the witnesses said many cooperatives have reblended cooperative revenues to members as a way of recouping manufacturing costs not covered by current FMMO make allowances. Second, the witnesses said insufficient make allowances disincentivize plant investment, whether it be in current or potential new plants.

The NMPF witnesses testified the industry lacks consensus on reliable data to determine make allowances due to inconsistencies in cost allocation and reporting across operations. The witnesses were of the opinion the available manufacturing cost surveys are not comprehensive or reliable enough to justify large make allowance increases. The witnesses all stressed increasing make allowances to levels above actual costs could cause untenable financial harm to producers, putting many out of business and jeopardizing the milk supply. One NMPF witness described how an informal manufacturing cost survey of some NMPF members was used in the development of Proposal 7.

A CDI witness testified regarding the impact insufficient make allowances have had on their member farms and six butter and milk powder manufacturing facilities. The CDI witness testified the NFDM and butter make allowances in Proposal 7 are transformations of the 2021 survey results, using the combined costs and yields of the two products. An LOL witness testified inadequate make allowances have led to disorderly market conditions, including lack of investment in manufacturing plants to process and balance milk supplies and inequitable producer pay prices between producers of different cooperatives and between cooperative and nonmember producers.

An Agri-Mark witness said current make allowances overvalue producer milk and make it difficult for cooperatives with manufacturing facilities to remain profitable and pay the FMMO blend price. Consequently, the witness said, cooperatives must re-blend proceeds in order to recoup manufacturing costs, resulting in producer pay prices often less than FMMO blend prices. Agri-Mark is a dairy farmer-owned cooperative located in the Northeastern U.S. with over 550 members, 3 cheese manufacturing plants and 1 butter-powder plant in the region.

A Foremost witness attributed higher operating costs seen in their plants to inflation since 2008, adding that in the last 2 years, they have experienced particularly acute price increases in all categories. A witness representing FarmFirst Dairy Cooperative (FarmFirst), a cooperative operating in the Upper Midwest with 2,600 dairy farmer members, testified negotiated over-order premiums have diminished by 24 percent since 2020 due to their processor's compressed margins, partly a result of inadequate make allowance levels. In addition to reducing premiums, the FarmFirst witness attested the current make allowances overvalue producer milk and have contributed to an oversupply of milk in the Upper Midwest, resulting in milk dumping, negative PPDs, depooling, and milk selling at below Class III prices.

A Northwest Dairy Association (NDA) witness testified in support of Proposal 7. NDA is a dairy farmer-owned cooperative located in the Pacific Northwest with approximately 295 members, whose subsidiary (Darigold) operates 5 fluid milk bottling plants and 7 manufacturing plants making butter, cheese, dry whey, and dry milk products. The witness testified Darigold's manufacturing costs increased 80 percent between 2008 and 2022. The witness said inadequate or delayed investment in manufacturing plant capacity increases transportation costs, which are borne by producers, since milk must be shipped farther distances to find an available manufacturing market. A witness representing Maryland and Virginia Milk Producers Cooperative, Inc. (MDVA), a dairy farmer-owned cooperative located in the Mid-Atlantic that operates three pool distributing plants and two pool supply plants manufacturing bulk butter and NFDM, testified costs had increased compared to 2008 levels, with NFDM conversion costs increasing 64 percent over the period. According to the MDVA witness, Proposal 7 would reduce, but not eliminate, the manufacturing losses incurred in balancing their milk supply. A witness representing Lone Star Milk Producers (Lone Star), a dairy-farmer owned cooperative marketing milk on the Appalachian, Southeast, Central, and Southwest FMMOs, testified that manufacturing costs at their butter and NFDM plant have risen since commencing operation in 2017. A witness representing Ellsworth testified to the increasing costs of production at their cheese and dry whey operation. Lastly, a DFA witness testified in support of Proposal 7 and provided dairy farm cost of production data, arguing this data should be considered when determining make allowances.

A dairy economist from the University of Missouri, appearing on behalf of NMPF, testified on the estimated economic impact of Proposal 7. Using an econometric model, the witness estimated the proposed make allowances would lead to a $0.30 decline in the All-Milk Price and a 200-million-pound milk production decline in the first year of implementation, with a further milk production decline of 400 million pounds in the second year. In the long run, the witness forecasted the decline in the All-Milk Price would

moderate to $0.04 as markets adjusted to lowered milk production.

A dairy farm accountant, testifying on behalf of NMPF, presented various statistics related to their dairy farmer clientele. The witness testified average total income from their clients' operations was $5.50 per cwt in 2022, with a break-even milk price of $19.78 per cwt. The witness said the average net income from 2006 to 2023 was $1.23 per cwt, on an average milk production of 995,115 cwt, yielding an average net income of approximately $1.2 million. The witness later stated that a 3,300-milking cow herd would require an investment of approximately $40 million.

An economist from Cornell University, testifying on behalf of NMPF, testified on the topics of dairy farm profitability, cost of production measures, and farm data from the Cornell Dairy Farm Business Summary, Michigan State University, and the University of Wisconsin. The witness warned that setting make allowances ''too high'' would lead to unwarranted investments in processing facilities while setting make allowances ''too low'' would lead to insufficient plant investments and cooperative deductions on member milk checks.

Numerous dairy farmers testified in support of Proposal 7, recognizing the need for increased make allowances despite what they acknowledge would be a decrease in FMMO producer prices. These witnesses testified to recent decreased farm margins due to a declining All-Milk Price, falling net pay prices, higher feed costs, and increased production costs, leading to near negative operating incomes. The witnesses said that while make allowance increases would hasten this trend, Proposal 7 accounts for these factors, balancing producer and processor needs. Multiple witnesses expressed doubt in the available manufacturing cost survey data due to its voluntary and unaudited nature, as well as observations of cheese manufacturing profitability and continued investment.

Dairy farmer witnesses testified that inadequate make allowances have disadvantaged dairy farmer-members of cooperatives who own manufacturing plants compared to dairy farmer-members of cooperatives who own no plants. Several dairy farmer witnesses said that the prevalence of market adjustment deductions from their member milk check signifies negative returns on the cooperatives manufacturing assets due to inadequate make allowances. Another dairy farmer testified processing costs for Agri-Mark's four manufacturing plants producing cheese, butter, NFDM, and whey have increased by an average of 20 percent since 2008, and insufficient make allowances have resulted in deductions to member milk checks to cover processing costs. According to the Agri-Mark witness, this has led to disorderly market conditions, which impair plant investment and disadvantage cooperative members. A CDI dairy farmer witness testified to the financial difficulties of operating CDI's balancing plants given current make allowance levels.

A witness representing the Milk Producers Council (MPC), an organization representing California dairy farms, testified Proposal 7's proposed make allowances balance producer and processor needs. The witness said the cost survey information entered into evidence is of limited value due to its voluntary, unaudited nature and the lack of transparency in cost allocation for multi-product plants. The witness argued differences between the All-Milk Price and the Mailbox Price indicates a need for increased make allowances and a guideline to the resulting impact on producer pay prices, currently estimated at $0.75 per cwt.

In its post-hearing brief, NMPF reiterated its arguments for adopting the make allowance levels contained in Proposal 7, writing it is the only option accounting for an increased cost in manufacturing while protecting producer pay prices. NMPF stated there has never been a make allowance adjustment greater than $0.35 per cwt, and the changes contained in Proposal 7 would decrease farmer milk prices by approximately $0.50 per cwt.

NMPF presented in its brief the aggregated costs cooperatives with manufacturing capacity shared on the record, to emphasize the increases across cost categories since make allowances were last updated. While the need to update make allowances to reflect higher costs is necessary, NMPF stated the data on the record is not sufficiently comprehensive, verifiable, or unambiguous to determine make allowances above those offered in Proposal 7. In its post-hearing brief, Agri-Mark reiterated support for Proposal 7 as the most balanced approach to updating make allowances, despite acknowledging the proposed levels are not sufficient to cover all manufacturing costs.

Opponents to Proposal 7, primarily representatives for IDFA or WCMA, echoed similar concerns from cooperative manufacturers regarding inadequate make allowances, claiming the inability to recover manufacturing costs on wholesale commodity products has led to a lack of investment in manufacturing capacity. These witnesses testified on the importance of make allowances fully covering manufacturing costs, rather than a portion of costs as proposed in Proposal 7. Witnesses testified that continued capital investment in plant yield and efficiency gains have not fully countered the effects of insufficient make allowances as costs have continued to increase. Without make allowances accurately reflecting costs, the witness said, manufacturers receive inaccurate financial signals, which impact investments, capital distribution, and FMMO pooling decisions. Additionally, they said the competitive advantage gained by manufacturing plants not regulated by an FMMO lead to more investments into operations unaffiliated with the FMMO system. Only an increase in make allowances reasonably covering commodity product manufacturing costs, according to these witnesses, can counteract these effects.

In its post-hearing brief, IDFA reiterated opposition for Proposal 7, writing that the proposed make allowance levels are inadequate and not grounded in observed data. IDFA stressed that make allowances are defined as covering the entire cost of converting raw milk to a given dairy product, not a portion. In its brief, IDFA pointed to NMPF's recognition that Proposal 7's make allowances do not fully cover actual costs but instead represent a balance dairy farmers can withstand. IDFA objected to the consideration of farm production costs when determining make allowance levels. IDFA reiterated FMMOs are not a price support or income support program, and the prices must reflect the market price of end-dairy products. IDFA explained manufacturers cannot raise the prices of commodity dairy products to offset higher manufacturing costs because the wholesale prices are captured in the NDPSR and would raise the reference price by the same amount. AMPI reiterated in its post-hearing brief opposition for Proposal 7 as failing to reflect 2022 manufacturing costs. AMPI argued that USDA should not delay increasing make allowances on the possibility that legislation will give USDA the authority to conduct a mandatory audited survey.

A witness from DIC testified in support of Proposals 8 and 9. The witness testified that setting minimum prices too high incentivizes excess milk production, while a low minimum price through higher make allowances allows for over-order premiums to set a competitive market price. The witness

argued Class III and IV prices should allow manufacturing plants to clear the market and operate profitably.

The DIC witness entered data concerning its 2022 California dairy manufacturing cost forecast (2022 CA Forecast). The witness testified the 2022 CA Forecast used a combination of 2003–2016 California Department of Food and Agriculture (CDFA) data, state and national indices, and market developments to measure how changes in labor, utility, and other costs historically moved the actual CDFA cost data. The model then used that information to forecast California-specific 2017–2022 manufacturing costs, according to the witness. The witness said while the model forecasts costs, the range of actual costs around those forecasts could be relatively wide given the relatively few observations (14 years) used to estimate the model. For example, the expert witness elaborated that CDFA only collected dry whey costs until 2006, when they surveyed fewer than three dry whey plants, which is why the CA analysis did not forecast dry whey costs. The DIC witness opined the best approach to determine manufacturing allowance levels is using observed cost data but offered the 2022 CA Forecast as another methodology for use with the other cost surveys and testimony presented.

An IDFA witness testified in support of Proposals 8 and 9, stating make allowances should be updated to reflect increased costs in manufacturing dairy products. The witness said that while end-product-prices change monthly to reflect the current market, make allowances are fixed at 2006 cost levels, forcing dairy manufacturers to lose money or stop production. The witness stressed the need for relief from the current inadequate make allowances that do not reflect rising industry costs, adding losses are not sustainable for plants or dairy farmers who depend on these manufacturing outlets for their milk. The witness explained IDFA's proposed make allowances are simple averages of the 2023 survey and 2022 CA Forecast plus a $0.0015 marketing cost.

The IDFA and WCMA witnesses asserted accurate make allowances need to be adopted quickly as current make allowances are based on 2005/2006 cost data. The IDFA witness clarified their staggered implementation proposal, which would implement proposed year 1 levels shortly after the final decision is published. Both IDFA and WCMA witnesses said the staggered implementation is designed to recognize the impact significant make allowance increases would have on producer prices. However, if there is any delay in implementing changes, both witnesses stressed the staggered implementation approach should be abandoned and the proposed year 4 levels should be implemented.

The WCMA witness stated the use of audited California manufacturing cost data in the 2022 CA Forecast should alleviate any data validity concerns and the 2023 survey methodology follows precedent used to determine the current make allowance levels. The witness noted the risk of using a simple average of the 2022 CA Forecast and the 2023 survey to determine proposed make allowances is the potential of the result being skewed towards California costs, since California plants are represented in both surveys.

A dairy farmer witness, who is a member of AMPI, testified on behalf of IDFA and expressed support of Proposals 8 and 9. The witness testified that AMPI, who participated in the 2023 survey, experienced cheese manufacturing costs close to the study average despite plant sizes that were smaller than the survey average plant size. The witness said their manufacturing costs of bulk cheese products are 47 percent higher and general plant expenses are up 62 percent in 2022, compared to 2008.

Several dairy manufacturer witnesses representing Hilmar Cheese Company (Hilmar), Glanbia, Saputo, and Leprino testified in support of Proposals 8 and 9. Hilmar is a cheese and whey manufacturer with processing locations in California and Texas. These witnesses testified dairy processing costs have increased, particularly of late because of inflation, noting Hilmar's natural gas costs were 45.1 percent above the 20-year average. The Saputo witness echoed testimony on increasing costs, citing the St. Louis Federal Reserve data series for labor, energy, packaging, and maintenance costs. The witness said these costs, comprising 20 percent of the total cost to manufacture a finished cheese product, rose 60 percent, on average since 2006. According to the witness, Saputo's manufacturing costs align with the 2021 and 2023 survey results. The Hilmar witness testified their manufacturing cost increases correlate with the results of the 2022 CA Forecast. The Leprino witness stated the 2021 survey and 2023 survey had robust participation, and the 2022 CA Forecast, which used CDFA audited mandatory data, leveraged a widely accepted statistical modeling approach. All four witnesses stressed the urgency of updating make allowances. The manufacturer witnesses generally agreed that inaccurate make allowances distort pricing signals for farmers, processors, and ultimately consumers.

Witnesses representing Nasonville Dairy and Cedar Grove Cheese, two proprietary specialty and commodity cheese manufacturer members of WCMA, testified to rising manufacturing costs by outlining costs in a similar manner to the 2021 and 2023 surveys. According to the witnesses, their costs have risen $0.3226 and $0.77 per pound, respectively, far beyond the fully implemented Proposal 8 levels. The witnesses testified that insufficient make allowances negatively impact cheese processing investments and increase the production of higher-cost specialty products unable to play the same balancing or foodservice roles as commodity products. They added current make allowance levels impair the ability of proprietary manufacturers to participate in the FMMO pool and deprives producers the benefits of having their milk pooled.

In their post-hearing briefs, WCMA and IDFA reiterated their support for Proposals 8 and 9. IDFA wrote that USDA has consistently set make allowances to reflect the most recent and reliable actual cost data, using multiple surveys, as in Proposals 8 and 9. Further, IDFA stressed in its brief the 2023 survey is the most robust of all of the author's previous surveys used to set make allowances. IDFA refuted the notion the 2022 CA Forecast is inappropriate to use for determining make allowances, explaining the underlying data is robust audited California manufacturing data and the econometric techniques are widely accepted. IDFA contended that the 2022 CA Forecast and 2023 survey averages are lower than the cooperative manufacturing costs shared on the record. Even if inflation has subsided since 2022, IDFA added in its brief, there would have to be deflation to arrive below pre-2022 levels.

IDFA clarified in its brief the proposed schedule for phasing in make allowance changes, which is designed to accommodate farmers. When addressing implementation timing, IDFA refuted the CME's points about incorporating risk management in the timing of implementation, arguing that CME's interests do not necessarily align with those of the broader dairy industry because of the fee revenue they generate.

In its brief, IDFA emphasized the destabilizing effect of current make allowances on processors and farmers. IDFA shared charts from the hearing, showing how the Mailbox Price is in close proximity to FMMO blend price,

which it says indicates FMMO prices are too high. IDFA refuted NMPF's argument that Proposals 8 and 9 will result in a $1.42 per cwt decrease in the All-Milk Price because FMMO prices are minimum prices and don't reflect premiums received. Further, IDFA wrote in its brief that dairy farmers whose cooperatives own processing facilities are receiving depressed prices when make allowances are too low.

IDFA said the best method to update make allowances is through a mandatory and audited USDA survey; however, USDA does not currently have the authority and IDFA estimates it would take approximately five years before new make allowances could be adopted once the authority was granted. IDFA reiterated arguments that make allowances under-representing actual costs harm both dairy farmers and manufacturers.

In its post-hearing brief, AMPI reiterated support for the make allowance levels in Proposals 8 and 9, contending they accurately reflect the changes in costs. AMPI added it supports immediate implementation, rather than the phased 4-year approach. AMPI wrote the 2023 survey had the largest product volumes of any previous surveys and highlighted other manufacturing cooperative testimony describing increased manufacturing costs. AMPI opined continued high manufacturing costs and farm bill delays have made make allowance updates more urgent.

Leprino's post-hearing brief reiterated its support of Proposals 8 and 9, emphasizing the importance of implementing make allowance changes immediately. Leprino stressed 2023 cost levels have continued to climb and offered its own updated cost increases, compared to 2022: 11 percent for labor, 17 percent for property insurance, and 9 percent for liability insurance.

A witness representing the AFBF testified in opposition to Proposals 8 and 9, opining the 2021 and 2023 survey data may be biased due to its unaudited nature and the known potential to be used for rulemaking, stating the incentive to overestimate reported costs for commodity goods disqualifies this voluntary data. The witness testified only the 2016 CDFA survey results can be verified as accurate enough to be used for determining make allowances. According to the witness, the relatively complicated 2022 CA Forecast model using a small number of observations (14 years) to forecast 2022 costs (6 years out from the actual data) could be overfitted to the 2000–2016 data and unreliable to predict future costs.

Numerous dairy farmer witnesses testified in opposition to Proposals 8 and 9, focusing on the negative effect significant make allowance increases would have on producer pay prices. A DFA farmer witness from New Mexico testified the make allowance increases contained in Proposals 8 and 9 would result in negative operating income over the next 10 years, making continued operation of their farm unsustainable. The witness said any make allowance increases would severely and disproportionally impact producers in the southwest due to the share of milk going into manufacturing products. A LOL dairy farmer testified significant increases in make allowances would be difficult for farms in California to absorb, where water scarcity has led to high forage costs. According to the witness, large make allowance increases would put adequate milk supply at risk, all the while guaranteeing profit for commodity manufacturers and leading to over production of manufactured dairy products.

Two dairy farmer witnesses, a member of the CDC and a small Maryland dairy farmer, testified against increases in make allowances due to the impact on producer pay prices and lack of accounting for dairy farm production costs. According to the witnesses, while processors can pass on costs to customers up the supply chain, producer margins are too thin to sustain substantial price decreases from increased make allowances. The witnesses testified that further declines to producer margins will cause more producer exits and disruption to the milk supply. A dairy farmer representing Edge testified any change in make allowances should require a 15.5-month delay, be restrained by the impact on producer pay prices, and cover only the most efficient plants.

In its post-hearing brief, NMPF reiterated its arguments in opposition to Proposals 8 and 9. NMPF argued that these proposed changes would decrease dairy farmer milk prices by approximately $1.45 per cwt, further narrowing producer margins and causing disorderly marketing.

NMPF cited ongoing plant investment as an indication current make allowances are not too low as portrayed by proprietary manufacturers. NMPF emphasized proprietary manufacturers are not required to be regulated and, thus, can choose not to participate in the FMMO and avoid paying minimum prices they contend are too high because of inadequate make allowance levels. NMPF opined about the lack of evidence to merit raising make allowances to levels contained in Proposals 8 and 9.

In its brief, NMPF refuted the studies used as a basis for Proposals 8 and 9. NMPF cited hearing testimony regarding the insufficiency of some plant sample sizes in the 2023 survey. Further, NMPF argued the 2023 survey does not capture how manufacturing costs are skewed by plants that serve a balancing role. NMPF stated if make allowances are set too high, balancing plants would be incentivized to run at maximum capacity, rather than running at less than full capacity to provide critical balancing services to the market. NMPF voiced concerns with the 2022 CA Forecast, noting the proposed make allowances in Proposals 8 and 9 are duplicative since the 2023 survey included California data. Further, NMPF opined that the 2022 CA Forecast is of little utility as it did not account for basic changes to the California dairy manufacturing sector since 2016, such as plant openings and closings and productivity improvements.

In its post-hearing brief, Select also opposed Proposals 8 and 9, on the basis of the 2022 CA Forecast being inappropriate to use in determining make allowances. Select echoed NMPF's argument that use of the forecast would be duplicative of California data. Further, Select argued indexing does not account for improvements to plant efficiencies and the Department has not previously used indexing to determine make allowances.

In its brief, the AFBF opposed any increase to make allowances, instead advocating they only be increased once a mandatory, audited cost survey was administered by the Department. The AFBF opined that both the 2021 and 2023 surveys were biased because there was a clear intention the surveys would be used in a rulemaking proceeding. The AFBF opposed the use of indexing to set make allowances, as was done in the 2022 CA Forecast, because it fails to recognize productivity improvements over time. The AFBF echoed other brief arguments that continued processor investment is evidence that make allowances are not too low.

The Midwest Dairy Coalition (MDC), an alliance of six dairy farmer-owned cooperatives operating in the Midwest, filed a post-hearing brief stating make allowance updates are long overdue, but took the position the Department should be granted legislative authority to conduct a mandatory and audited cost survey. MDC did not offer support or opposition to any make allowance related proposals. In its post-hearing brief, Edge also did not support or oppose any make allowance related

proposals but cautioned against setting make allowances too high. Until there is a mandatory and audited USDA-administered survey, Edge stated, the Department should err on the side of caution to not subsidize commodity manufacturing.

In its post-hearing brief, Select offered an alternative methodology for determining the make allowance levels using what Select argued was the most reliable record data. Select suggested taking the average of the 2021 survey and 2023 survey, subtracting the current make allowance level, and taking half that difference to add to current make allowance levels. As a result, Select proposed the following: cheddar cheese, $0.2281; butter, $0.2004; NFDM, $02260; and dry whey, $0.2498.

In its post-hearing brief, CME noted any make allowance changes would be considered material changes, and USDA should consider an implementation timeframe that mitigates risks to those involved in futures and options trading.

b. Yield Factors

Submitted by Select, Proposal 10 seeks to amend the cheese price formula by increasing the butterfat recovery rate in the cheese yield, from 90 to 93 percent. A Select witness testified in support of Proposal 10 and clarified a butterfat recovery rate of 93 percent would also necessitate an increase in the butterfat yield factor in the protein price formula from 1.572 to 1.624. According to the witness, these changes would result in a modest increase in the Class III price, estimated at $0.04 per cwt. The witness stressed USDA should not be guided by price impacts but rather by achieving formulas to better reflect manufacturing realities and the actual value of raw milk. Select reiterated support for this proposal in its post-hearing brief.

An independent expert witness, retained by Select, testified advancements in vat technology, coagulants, and curd handling have enabled manufacturers to achieve recovery rates higher than the currently assumed 90 percent. The witness described how modern, horizontal vats attain butterfat recoveries far exceeding both open and enclosed horizontal vats, and how most commodity cheddar manufacturers use advancements in coagulants and curd handling to attain greater than 93 percent butterfat recovery. Additionally, the witness said, whey cream can be reintroduced into the cheesemaking vat to increase cheese yield and revenue, ultimately increasing butterfat recovery.

The AFBF wrote in its brief that it also supports Proposal 10 to increase the butterfat recovery factor. The AFBF pointed to evidence on the record of increasing plant efficiencies, justifying updating the butterfat recovery factor to the level in Proposal 10.

Six witnesses, representing Glanbia, Leprino, IDFA, CDI, DIC, and MPC, testified in opposition to Proposal 10. The Glanbia witness described a broad range of industry fat recovery based on plant age and processing techniques, and acknowledged many modern plants, including Glanbia plants, can achieve 93 percent cheddar fat recovery. The witness testified Proposal 10 is being offered to enhance prices while ignoring other parts of the formula that overvalue milk. The witness contended lost solids within the manufacturing plant and the discounted price of whey cream, should they be considered, outweigh the effects of Proposal 10 on milk prices. The Leprino witness testified any changes to the yield factor should only occur after a comprehensive review of all yield assumptions. The witness agreed 93 percent butterfat retention is achievable in some plants but does not believe it is possible across the entire industry.

The IDFA witness contended Proposal 10 takes a piecemeal approach to changes in the yield formula and selectively focuses on dairy farmer revenue enhancements only. The witness opined whey cream is overvalued in the current formula, as butterfat not going into cheese is currently valued as Grade AA butter despite regulation that whey cream cannot be used in Grade AA butter. The witness claimed whey cream is discounted 20 percent or more compared to fresh cream. In addition, the witness said in-plant milkfat losses are not recognized in the current formula, something that should be considered when evaluating yield factor changes. The witness testified any decreases in the Class III prices that result from accurately accounting for both processing losses and whey cream values would more than offset the increases in Class III prices proposed by Select.

A witness from the Center for Dairy Research (CDR), appearing on behalf of IDFA, testified to observing improvements in butterfat retentions over the past 40 years, mostly due to improved vat design and technology. The CDR, with a dairy plant on the University of Wisconsin-Madison campus, supports the U.S. dairy industry with expertise in cheese, dairy ingredients, cultured products, dairy beverages, quality/safety, and dairy processing. The witness noted a range of butterfat losses at the cutting stage including 9 to 10 percent fat loss in open vats, 7 percent fat loss in Double O vats, 6 percent fat loss in horizontal vats, and 5 percent fat loss in modern vats. The witness testified that while large modern plants are installing newer, more efficient vats, old, less efficient vats are not leaving production, and are being repurposed and installed in medium and small plants throughout the country. The witness noted there is still a large variety of vats being using in the industry, and stressed the latest vat design does not ensure optimal butterfat retention, as the experience of the cheesemaker and product handling practices could also lower butterfat recovery.

Based on current observations and work within the industry, the CDR witness provided best estimates for fat recoveries in cheddar cheesemaking as 91 to 93 percent retention in well-run factories with modern vats, 90 to 92 percent retention in well-run factories with vertical Double O vats, and 88 to 91 percent retention in factories with open vats. The witness said, based on their experience, 91 percent could be considered the industry average butterfat recovery for cheddar cheese plants.

A CDI witness, appearing on behalf of NMPF, testified to the lack of yield data available to support the proposed recovery rate contained in Proposal 10. The witness supported a tempered update to the cheese make allowance that does not include an update to the yield factor. A witness representing DIC testified the current 90 percent butterfat recovery rate is reasonable because, despite some newer, more efficient plants achieving higher fat recovery, older plants may not be able to achieve the higher rates. The DIC witness stated fat recovery data is lacking across the industry and further asserted the current 90 percent butterfat recovery should be retained. The witness representing MPC testified the current formula should remain in place until the industry tackles the mechanics of the Class III formula, and the big issue is how butterfat not being retained in the cheesemaking process is valued.

A witness representing AMPI provided testimony supporting the improvement seen in butterfat recovery due to new vat technology. The witness said AMPI installed cheesemaking equipment that facilitates the recovery of fat; however, they did not provide specific data.

Submitted by Select, Proposal 11 seeks to eliminate farm-to-plant shrinkage from the yield factors in the FMMO Class III and IV price formulas. A witness appearing on behalf of Select testified USDA's decision to include

shrinkage in the formula was premised on the concept that such losses were not in the handler's control and are unavoidable and common. The Select witness was of the opinion producers, cooperatives, and handlers do have the ability to address and stem losses in the transportation of milk from the farm to the plant. The witness said historically, as the number of farms on a milk route increased, the probability for discrepancies between farm weights and plant weights also increased, as each stop offered potential for spillage, loss within piping, and errors in measurement. The witness shared statistics on the increasing size of U.S. dairy farms, stating that in 2016, three-quarters of all U.S. milk production came from farms that could fill a full tanker, whereas in 2000, less than half of U.S. production came from farms filling a full tanker. The witness estimated 80 percent of the current milk volume in the U.S. comes from farms able to fill full tankers on every-other-day pickup schedules. Consequently, said the witness, the occurrence of shrinkage is decreasing. As an example, explained the witness, Select's members are large enough to ship full tanker loads of milk, meaning Select does not experience the same risks of milk loss which occur on multi-stop routes.

Other than milk losses occurring with hoses, the Select witness was unaware of any inherent, unavoidable, farm-to-plant losses that could occur within the pick-up process. The witness said even farms without the ability to fill a tanker can adopt farm scales, flow measurement, and other technologies to minimize imprecision and inaccuracy. The witness testified the cost of implementing these improvements would be offset by the anticipated price impacts of adopting Proposal 11, which the witness estimated to be $0.07 per cwt.

A second Select witness presented an analysis of Select plant data from August 2022 to July 2023, representing 171,240 milk shipments and a total of 9.8 billion pounds. The witness stated approximately half of their customers do not report plant weights back to Select. For those plants who do report, the witness said reported plant weights exceeded farm weights about half of the time. The witness stated non-shrink factors, such as scale calibration or weather, typically cause the large discrepancy between farm and plant weights. The witness concluded that for the subset of loads where differences occurred between farm and plant weights, the net variance across all loads was less than 0.1 percent.

A witness testifying on behalf of Continental Dairy Facilities (CDF) and Continental Dairy Facilities Southwest (CDF SW), two wholly owned subsidiary plants of Select in Michigan and Texas, manufacturing NFDM, butter, and buttermilk powder, presented farm-to-plant loss data to support Proposal 11. The witness analyzed farm-to-plant losses in milk deliveries to the two CDF facilities from August 2022 through July 2023, comprised of both single and multi-farm pickups. The witness stated in total, plant weights averaged 0.15 percent lower than farm weights for CDF and 0.10 percent lower for CDF SW. The discrepancies ranged from a negative 0.32 percent (plant weights were 0.32 percent lower than farm weights) to 0.67 percent (plants weights were 0.67 percent lower than farm weights). Since many of the non-Select shipments to CDF are multi-farm pickups, the witness said management for farm-to-plant shrink is not unique to Select or larger farms, generally. The witness described improperly calibrated scales, input or transposition errors by milk haulers, changes in equipment or personnel when weighing loads, or snow settled on scales or tanks when weighing, as reasons for weight discrepancies. The witness testified these variances are not inherent and that they can be addressed. Select reiterated its arguments supporting Proposal 11 in its post-hearing brief.

The AFBF expressed support for Proposal 11 in its post-hearing brief. The AFBF contended that data on farm-to-plant shrinkage contained in evidence is similar to what was used to determine the original farm-to-plant shrinkage factor. The AFBF argued that this issue does not merit a formal data collection, but a one-time adjustment to reflect that farm-to-plant shrinkage is much less significant than it used to be.

Five witnesses representing IDFA, Leprino, CDI, DIC, and MPC testified in opposition to Proposal 11. The witnesses asserted Select's minimal farm-to-plant shrinkage is not the reality for much of the dairy industry, noting the lack of industry-wide data on farm-to-plant shrinkage and the differing nature of measuring components at the farm, rather than at the plant, are reasons Proposal 11 should not be adopted. The witnesses further testified FMMO yield factors should not be based on one company's experience, especially one, they argued, that was an industry leader in this area.

The Leprino witness testified that while Select has been able to limit their own farm-to-plant loss through increasing herd sizes and improvements in milk weighing and sampling, this is not a representation of the nationwide dairy industry. Additionally, the witness argued the scientific characteristic of milk fat clinging to the walls of stainless steel has not changed; as such, volume and fat loss still occur, even at the most innovative plants. The IDFA witness claimed less than 10 percent of all farms produce enough milk to fill entire tanker loads, so it is reasonable to conclude the losses experienced when the formulas were adopted are still happening today. According to the witness, failure to account for the diversity of farm size may further incentivize manufacturers to prefer larger farms over smaller farms.

Submitted by Select, Proposal 12 recommends amending the nonfat solids price formula by increasing the NFDM yield factor from 0.99 to 1.03. A Select witness testifying in support of Proposal 12 said it would correct the NFS yield factor by including the value of milk solids utilized in buttermilk powder, as producers are not currently paid accurately from a price calculated on NFDM prices alone. According to the witness, a proper yield factor for NFDM should account for all milk solids, including the milk solids remaining in cream after separation and used in butter or buttermilk. The witness stressed the initial NFS formula, correctly adopted in 2000, included buttermilk powder.

A witness representing CDF and CDF SW testified on price alignment and processing differences between NFDM and buttermilk powder. The witness stated sales and regional prices observed at the two plants for buttermilk powder and low-heat NFDM are closely aligned, as well as consistent with prices reported by AMS' Dairy Market News (DMN) from January 2023 through June 2023. The witness further testified that the process of drying buttermilk utilizes the same equipment as that of drying skim milk but requires a thorough cleaning of equipment when changing product lines, higher temperature, and additional drying time due to buttermilk's higher butterfat content. The witness said this leads to increased utility costs of approximately $0.02. The witness testified the NFS yield factor should consider all powder products, including buttermilk powder whose yield is lower than NFDM. Select reiterated its arguments in support of Proposal 12 in its post-hearing brief.

In its post-hearing brief, the AFBF expressed support for Proposal 12 as it believes it reflects the long-term market shift toward valuing buttermilk near the NFDM price. The AFBF stated that a formal extensive data collection is not

necessary for this proposal to be adopted because there is a clear record of buttermilk values.

Two witnesses, representing Leprino and IDFA, testified in opposition to Proposal 12. The witnesses testified Proposal 12 is based upon a theoretical yield approach which assumes a perfect system with no in-plant component losses in the conversion of NFS to NFDM. The witness said in-plant losses exist even in the most modern and efficient manufacturing facilities and should be recognized in the price formulas. The witnesses gave an example of the portion of NFS remaining in cream after separation, which cannot be processed into NFDM. The Leprino witness argued the FMMO system is predicated on the notion processors should pay for milk based on the revenue they can derive from selling products manufactured from that milk. The witness said milk routinely lost in processing does not end up in finished products, which should continue to be accounted for in the formulas. The IDFA witness testified product yields should incorporate manufacturing losses, and overestimating the quantity of NFDM manufactured from NFS by accounting for buttermilk powder would overvalue the market-clearing of NFDM and contribute to disorderly marketing.

A witness from CDI testified on behalf of NMPF in opposition to Proposal 12. The witness testified CDI supports evaluating all factors in the Class III and IV formulas, and yield factors should only be updated once industry-wide data on product yields are available. The witness stated the NFS price formula is based on NFDM and the yield factor correctly reflects the yield of NFDM only, without an adjustment for buttermilk powder. The witness said Proposal 12 would adjust the NFDM yield factor to represent a composite yield for multiple products which differ in terms of component composition, uses, cost of manufacture, and market prices. While acknowledging buttermilk powder's processing costs are likely higher than NFDM's, the CDI witness testified there was not enough data to quantify the difference in processing costs; further, data presented from DMN and by Select witnesses are not sufficient to determine the alignment of prices between buttermilk powder and NFDM. The witness clarified that buyers of butterfat and NFS must account for all solids utilized at the minimum component prices, regardless of whether the solids are used in the surveyed products of butter and NFDM or in other Class IV products such as buttermilk powder.

A witness from the DIC testified in opposition to Proposal 12. According to the witness, while NFDM yields are likely higher than the current yield factor of 0.99, not all NFS in producer milk end up in NFDM, with some NFS from cream remaining in buttermilk. The DIC witness claimed the lower yield factor is to compensate for generally lower buttermilk powder prices compared to NFDM but acknowledged DMN data suggested a buttermilk powder price discount relative to NFDM narrowing in recent years. A witness from MPC testified in opposition to Proposal 12, stating they were opposed largely due to a lack of adequate data.

In their post-hearing briefs, IDFA and NMPF opposed Proposals 10, 11, and 12. IDFA argued the three proposals are not representative of industry-wide experience, but rather on what is possible given modern technology and equipment. NMPF echoed IDFA's opposition in its brief, citing insufficient data to justify the proposed changes. IDFA specifically objected to Proposal 11, stating it would place an unfair burden on small farms that cannot fill a tanker and, thus, continue to experience shrinkage. Proposal 11 was also opposed by WCMA in its post-hearing brief. Lastly, IDFA contended Proposal 12 should be rejected because it overvalues buttermilk powder.

Base Class I Skim Milk Price

Six proposals to amend the base Class I skim milk price were considered in this proceeding. Proposal 13, submitted by NMPF, seeks to return the base Class I skim milk price to the higher-of the Class III or Class IV advanced skim milk price, referred to as the ''higher-of'' mover. Proposal 14, submitted by IDFA, would use an average of the advanced Class III and Class IV skim milk prices, plus an adjuster that resets every January. The adjuster would be the higher of either: (1) $0.74; or (2) the 24-month average difference between the higher-of and the average-of the advanced Class III and Class IV skim milk pricing factors. The 24-month calculation would run from August of the three years prior to July of the previous year. Proposal 15, submitted by MIG, would amend the current average-of mover from a $0.74 adjuster to a monthly rolling average adjuster calculated as the difference between the higher-of and the average-of, for 24 months, with a 12-month lag.

Proposal 16, referred to as ''Class III plus,'' submitted by Edge, would start with the announced Class III price and incorporate a 36-month rolling adjuster averaging the monthly differences between the higher-of the advanced Class III or advanced Class IV skim milk prices, and the Class III skim milk price. The proposal would eliminate advanced prices. Proposal 17, also submitted by Edge, would return to the higher-of mover but would use announced rather than advanced prices. Proposal 18, submitted by the AFBF, would return to the higher-of mover and would eliminate the advanced pricing of Class I skim milk, Class I butterfat and Class II skim milk.

An NMPF witness testified in support of Proposal 13. The witness reviewed the 2000 Federal Order Reform (Order Reform) rulemaking and summarized the higher-of methodology as accurately reflecting the value of the different milk use categories and ensuring shifts in demand for any one manufactured product does not lower Class I prices. The witness said the Department determined during Order Reform that the higher-of mover addresses disorderly marketing by reducing volatility in milk prices, reducing class price inversions and depooling, and assisting Class I handlers in competing for a milk supply.

The NMPF witness testified the 2019 change to the average-of was designed to facilitate price risk management strategies for fluid milk processors, which, the witness stated, is not an objective of FMMOs. The witness said the intent of the change was to be roughly revenue neutral, while allowing handlers to better manage volatility in monthly Class I skim milk prices using Class III and Class IV milk futures and options contracts. The witness claimed the 2019 change has not functioned as intended or anticipated by NMPF, has exacerbated disorderly marketing conditions, has not been revenue neutral, and will continue to have deleterious effects on the dairy industry. The witness described the asymmetrical risk to producers which was not anticipated when the mover change occurred. The witness explained the higher-of exceeds the average-of calculation whenever the Class III and IV advanced skim milk pricing factors differ by more than $1.48 per cwt, regardless of which factor is higher. The witness noted the reverse is true when the advanced skim pricing factors differ by less than $1.48 per cwt.

A witness from Southeast Milk, Inc. (SMI), a NMPF cooperative member with 114 dairy farmer members, testified that when the two advanced skim milk pricing factors are equal, the maximum amount by which the average-of can exceed the higher-of Class I mover is $0.74 per cwt, but there is no limit by which the average-of can

fall below the higher-of Class I mover. The NMPF witness testified that in 2020 and 2022, there were instances when the average-of mover fell below what the higher-of mover would have been, in which the difference was at times significant. The witnesses testified the maximum divergence recorded between the current average-of mover and the higher-of mover was a $5.19 lower average-of mover in December 2020, when Classes II, III, and IV skim prices differed by approximately $11 per cwt. In comparison, the witness said, the maximum gain during that time was capped at $0.74. The SMI witness said because the upside is capped, but the downside is not, it is difficult to ever return to revenue neutrality under the average-of mover.

The SMI witness testified the average-of mover has lowered dairy farmer revenue compared to what they would have received under the higher-of mover, with estimated cumulative market losses totaling $998.3 million from May 2019 through August 2023. The witness said that for the same period, the average-of mover decreased revenue to the southeastern FMMO producers by more than $192 million. The NMPF witness reviewed data during periods of relative price stability, revealing the average-of mover generated modest gains over the higher-of mover. However, in periods of price volatility, there were substantial revenue losses in months when the average-of mover was less than the calculated higher-of mover, which resulted in significant cumulative losses to producers over time.

The NMPF witness claimed the change to the average-of mover increased disorderly marketing by reducing Class I prices relative to the other classes and creating greater incentives for handlers to depool milk. The witness said that in 2020, the enhanced demand for cheese relative to the demand for butter and NFDM widened the spread between Classes III and IV well beyond $1.48, substantially lowering Class I prices compared to what they would have been under the higher-of mover. The SMI witness testified that between May 2019 and June 2023, the Class III skim value exceeded the Class IV skim value by over $1.48 per cwt in 16 months, and the Class IV skim value exceed Class III skim value by $1.48 or more per cwt in 11 months. In 2023, according to the SMI witness, the average-of continued to be lower than the higher-of in some months, which had a more significant impact to dairy farmers because it occurred during a time of extremely low dairy farm margins. The witness said they expect to see more volatility and larger spreads between Class III and Class IV prices in the future because of anticipated higher butterfat prices which will lower the Class III skim value.

The NMPF witness testified that adoption of the average-of mover created class price inversions and resulted in significant volumes of depooled Class III milk during the second half of 2020. Class price inversions occurred again in 2022 and 2023, said the witness, resulting in price volatility and substantial depooling of Class IV milk. The witness opined a wide variety of market conditions have proven capable of generating market volatility, driving a wedge between Class III and IV skim milk prices, and resulting in an average-of mover of more than $1 per cwt below what the higher-of mover calculation would have been.

The NMPF witness said the average-of mover has not resulted in increased risk management activity at a value to handlers anywhere near the losses experienced by dairy farmers. Numerous witnesses testified their fluid milk customers have shown very little interest in hedging milk since the average-of mover was implemented.

NMPF witnesses testified other Class I mover proposals under consideration in this proceeding use the higher-of mover calculation as the benchmark for determining adequate Class I skim milk price revenue. They testified those proposals provide producers revenue in an after-the-fact-manner that fails to maintain the maximum monthly separation between advanced Class I prices and the manufacturing class prices, a goal expressed by the Department when it recommended the higher-of mover during Order Reform.

The SMI witness testified that because of the change to the average-of mover, the southeastern FMMOs experienced disproportionately large reductions in blend prices due to the higher Class I utilization in the region, making it harder to attract supplemental milk the region requires to meet fluid demand. The witness noted that using an average-of mover to establish a Class I skim price makes it more difficult for Class I handlers to procure milk from plants with higher-value manufactured products because the price difference is not large enough to draw milk away from manufacturing. The witness opined a Class I skim mover should provide for orderly marketing by ensuring an adequate supply of raw milk for fluid plants, producer price equity including prompt and uniform payments to farmers and cooperatives, and stability for dairy farms. The witness argued the current average-of mover makes it more difficult for FMMOs to achieve those purposes.

An NMPF consultant witness testified the higher-of mover is necessary to transmit market signals in real time. The witness said a higher Class I milk price relative to other class prices sends market signals to move milk from surplus to deficit regions to ensure adequate fluid milk supplies. Additionally, the witness continued, disorderly marketing caused by prolonged depooling occurs when the Class I price is lower than Class II, III, or IV prices. The witness asserted prolonged periods of depooling create market disorder. Since the change in 2019, claimed the witness, the Class I mover has facilitated persistent long-term periods of depooling because there is no guarantee Class I prices will exceed the other class prices over time. In contrast, the witness asserted that under the higher-of mover, if Class III and IV advance skim prices increased, the Class I price would remain higher and depooling would moderate.

The NMPF witness presented data to demonstrate the objective of adopting the average-of mover, to allow for greater risk management, has not been accomplished, and prolonged periods of depooling have made it difficult for producers to hedge their farm margins. The witness stated that when milk is not pooled, producer hedging losses cannot be offset by gains on milk checks because revenue from the higher valued manufacturing milk is not shared with the marketwide pool. The witness asserted risk-management performance is relatively similar under the higher-of and average-of movers, entering data they believed showed how Class III futures contracts would similarly mitigate risk. The witness contended other proposals do not adequately replicate the higher-of price in future periods; nor do they share equally among dairy producers and others, necessitating periodic recalibration. Rather than recognize the average-of limitations, the witness said, other proposals seek to align the average-of and higher-of performance. The witness testified an average-of mover with an adjuster causes past market conditions to influence current prices, sending pricing misinformation to the market and causing disorderly marketing. The witness concluded that without immediate market signals from the advanced Class III and IV milk prices, any of the average-of or Class III plus movers would struggle to replicate the higher-of mover performance.

An NMPF witness representing Prairie Farms testified producer revenue

has been significantly reduced, without recovery, since the change to the average-of mover. Prairie Farms is an Illinois based farmer-owned milk cooperative with over 600 dairy farmer members operating fluid milk processing and manufacturing facilities that produce a variety of fluid and manufactured dairy products. Increased depooling in the last few years because of the average-of mover has resulted in increased price volatility, the witness said. The witness testified that with the average-of mover either Class III or Class IV milk is not pooled, depending on which class is higher, because the manufacturer is able to keep the additional market revenue instead of sharing it among pooled producers.

The Prairie Farms witness testified dairy producers want a pricing system that gives real-time market signals, which is accomplished with the higher-of mover. The witness testified Prairie Farms supported the change to the average-of mover believing it would facilitate their customers' ability to hedge Class I milk. However, Class I processors have generally not increased their use of hedging, said the witness, while dairy producers have taken on additional risk by giving up a higher Class I price. The witness stated one reason they believe their customers do not utilize hedging is because of fear of incurring a price disadvantage compared to their competitor. The witness added that of the Prairie Farms dairy farmer members engaged in risk management, there has been a decrease in the use of forward contracting since the implementation of the average-of mover because of negative PPDs, as they create a negative basis dairy producers are unable to account for in their risk management decisions. The witness presented data showing negative PPDs have become larger and more frequent under the average-of mover, which has increased the volume of depooled milk and significantly reduced revenue to farmers.

Another NMPF witness representing Upstate Niagara Cooperative (Upstate Niagara) testified the average-of mover has not operated as intended, has negatively impacted producer revenue, and has exacerbated disorderly conditions. Upstate Niagara is a dairy farmer-owned cooperative marketing the milk of approximately 250 members and operating eight fluid processing and manufacturing plants in New York and Pennsylvania. According to the witness, under the average-of mover, producers pooled on FMMOs with higher Class I utilization were most severely impacted due to the depressed Class I milk prices and no ability to benefit from the higher priced manufacturing milk. Similar to other witnesses, the Upstate Niagara witness described the asymmetric price risk of the average-of mover.

From interactions with fluid milk customers, the Upstate Niagara witness said there is widespread acceptance of prices based on FMMO monthly price announcements by their conventional customers. The witness said conventional customers have been less interested in pursuing a fixed price if there was any chance it could result in a competitive disadvantage in any given month. The witness recognized there may be some processors or end users in specialized Class I product channels that may utilize hedging but contended it is a relatively small portion of total Class I sales.

A University of Missouri professor testifying on behalf of NMPF presented results of an analysis conducted to evaluate the impact of adopting Proposal 13. The witness testified, under the higher-of mover, Class I prices would increase every year between $0.32 and $0.50 per cwt; the Class II price would be between $0.08 and $0.12 per cwt less annually; the Class III price would be between $0.06 and $0.13 per cwt less annually; the Class IV price would be between $0.08 and $0.12 per cwt less annually; and the all-milk price would be between $0.01 or $0.02 per cwt higher annually, except for a more significant increase of $0.06 per cwt in the first year. The witness said the model forecasted the effect on the all-milk price to moderate over time as production expands.

Twenty dairy farmers testified in support of Proposal 13. Many dairy farmers testified blend prices have been lower and their milk prices have been reduced since the average-of mover was implemented. They said only when Class III and Class IV prices are within a narrow range of each other is the average-of mover equal to or outperforming the higher-of mover. The witnesses said their experience supports NMPF's assertion that farmers' milk prices have been reduced by $950 million, and the reduction is not just a COVID-era anomaly. Dairy farmer witnesses said the losses demonstrate the goal of revenue neutrality with the change to the average-of has not been achieved. One witness asserted that in 29 of the 52 months since the average-of was adopted, Class I prices averaged $1.30 per cwt less than what the price would have been under the higher-of mover. In comparison, said the witness, in the remaining 23 of the 52 months the average-of returned a price only $0.42 higher per cwt. The witnesses testified to near-universal support by dairy farmers for a return to either the higher-of or, under the average-of, a mechanism to be equal to the higher-of over a period of time, such as 24 months.

Several dairy farmers urged a return to the higher-of mover, claiming a need for financial relief as dramatic shifts in milk markets since implementation of the average-of mover have caused significant financial losses to dairy farmers. Dairy farmers reiterated the average-of mover change affects 100 percent of pooled producer milk while it is unlikely fluid milk processors are covering 100 percent of their products with risk management tools. A dairy farmer testified they were assured the change to the average-of would be net neutral or net positive, but it has not been. Many dairy farmer witnesses described losses to dairy farmers under the average-of compared to what the Class I mover would have been under the higher-of and testified to receiving lower blend prices. The dairy farmers were concerned about receiving a delayed value of milk from a Class I mover with a rolling average methodology because they believe they cannot afford to wait months or years for the added revenue. They testified restoring the higher-of mover through adoption of Proposal 13 would help to reduce the volatility in monthly milk prices, bringing more stability and predictability to farmer income.

Dairy farmers of all sizes testified to relying on risk-management tools, such as Dairy Margin Coverage (DMC), Dairy Revenue Protection (DRP), and CME futures and options markets because it is difficult to manage their farms through periods of significant price volatility. Dairy farmers' testimonies described a range of contract periods, anywhere from 3–18 months, depending on the individual farmers' risk-management strategy and risk tolerance. In its post-hearing brief, NMPF reiterated hearing testimony arguing the average-of mover does not meet the standards set forth in Order Reform, and the change has not been revenue neutral as originally assumed. NMPF restated that under the average-of mover, price inversions, volatility, and depooling have increased, and Class I prices have been less effective at incenting milk to fluid processors relative to manufacturing. NMPF reiterated the asymmetrical risk borne by dairy farmers with the average-of mover and the frequency of which the difference between Class III and IV prices exceeded $1.48 per cwt, effectuating that risk.

NMPF reiterated the average-of mover failed to send appropriate market

signals to participants because the fixed adjuster could not maintain the maximum monthly separation between the advanced Class I and the manufacturing class prices. NMPF wrote this increased the likelihood manufacturing classes would have a higher value than milk used in Class I and resulted in increased volumes of depooled milk. Under the higher-of mover on the other hand, NMPF argued, when a particular manufacturing class price is rising, the Class I price also rises and tends to maintain Class I as the highest priced class. To dampen the effect volatility in the manufacturing classes has on Class I, the highest priced manufacturing class should provide the foundation for ensuring the Class I price remains above the manufacturing classes almost every month, reducing the incentive to depool, which is disorderly.

The demand for Class I hedging is not clear, NMPF asserted in its brief, and no evidence was presented to suggest more than a small minority of the overall fluid market utilizes hedging, especially beyond ESL handlers. NMPF argued in its brief that while facilitating risk management for fluid processors may have merit, it is not an objective of FMMOs. In regulating processors, the AMAA only considers price uniformity to processors, NMPF asserted. Finally, NMPF restated in its brief the widespread support of producers for a return to the higher-of mover.

The Dairy Cooperative Marketing Association, Inc. (DCMA), a Capper-Volstead Marketing Agency in Common with nine cooperative members in the southeastern U.S., submitted a post-hearing brief in support of Proposal 13. In its brief, DCMA argued the change to the average-of mover has not been revenue neutral to dairy farmers, nor provided benefits to the industry as originally intended. According to DCMA, the hearing record demonstrates that little Class I hedging occurs, especially on HTST milk, and includes no evidence that the use of hedging is more prevalent now than prior to the change. DCMA stated most testimony demonstrated HTST milk is sold based on FMMO announced prices each month plus a fixed margin. Because revenue on packaged milk sales flows back to the processor in step with the monthly changes in the FMMO announced prices, there is no price risk to the Class I processor under this system, according to DCMA. In its brief, DCMA described the pronounced losses in the southeastern region as a result of the change to the average-of mover.

The MDC submitted a post-hearing brief in support of Proposal 13, expressing the importance of making the changes as part of the FMMO reform process underway. MDC conveyed in its brief the importance of ensuring all reforms are considered in concert since all changes have ripple effects throughout the entire system and across all classes of milk.

In its post-hearing brief in support of Proposal 13, Select reiterated the proposal would support the priorities expressed by the Department in Order Reform, the rationales of which remain true today. Select cited billions of dollars lost to producers, an increase in depooling, and a lack of Class I handlers hedging their milk costs as reasons the average-of has failed.

In both witness testimony and briefs, IDFA and MIG strongly opposed a return to a higher-of mover. A majority of their opposition was contained in supporting testimony and evidence for Proposals 14 and 15, as detailed below.

A witness representing IDFA testified in support of Proposal 14. The witness said the goal of Proposal 14 is to keep producer Class I revenue consistent with what would be experienced under the previous higher-of mover, while allowing for effective and affordable Class I risk-management strategies.

The IDFA witness claimed that in the long-run, the proposed Class I mover would never fall below what the Class I skim milk price would have been under the higher-of mover. According to the witness, Proposal 14 would have paid more than the higher-of mover in 13 of the past 21 years. The witness asserted dairy farmers are ''made whole'' as compared to the higher-of mover over time through the annual adjuster calculation. The witness presented data from 2003 through 2019 showing Proposal 14 would have yielded a Class I price $0.08 greater than the higher-of mover. For 2004 through 2023, the witness said Proposal 14 would have yielded a Class I price $0.05 higher, due to the $0.74 floor.

The IDFA witness entered data and analysis to show the volume of milk not pooled would be slightly less under Proposal 14 than Proposal 13, and the Class I price would be lower than Class III or Class IV prices in nearly the same number of months under both proposals. The IDFA witness presented an analysis showing Proposal 14 would have reduced price volatility with the only exception of very high cheese prices in 2020. According to the witness, volatility equates to greater price risk, which increases hedging costs, and ultimately higher consumer prices.

The IDFA witness countered claims the higher-of mover sends important price signals to dairy farmers through the Class I price, instead claiming the blend price sends more important price signals because it is the price farmers receive. The witness alleged there is little difference between signals sent by the blend price under Proposals 13 and 14, arguing that from 2012 to 2022, Proposal 13 would average 31.9 percent of the Class I value in the blend price while Proposal 14 would average 31.8 percent. As the impact on the blend prices is very similar, over time there is little difference in price signals between the proposals, the witness said.

Regarding the delay incorporated by the rolling adjuster and farmers possibly not receiving the make-up payments, the IDFA witness noted farmers go out of business for many reasons, and some may go into the business or expand and benefit from higher payments. The witness said this issue is no different than handlers going out of business before the make allowances are raised.

The IDFA witness testified hedging is a critical tool for the subset of innovation and value-added milk manufacturers to remain competitive with alternative beverages. In the few growing segments of the milk market, especially ESL and higher value-added products, retailers are demanding processors provide long-term fixed price contracts, rather than contracts with fluctuating monthly prices, the witness said. Since processors cannot enter into a fixed purchase price for raw milk with their milk suppliers, hedging allows processors to take on the risk of entering into a fixed sales price for its finished products and cover the risk of raw milk prices rising during the contract period, the witness testified.

The IDFA witness noted several ESL processors formed and quickly implemented risk management plans in anticipation of the change to the average-of mover. The witness noted ESL processors are interested in hedging because of the longer product shelf-life. According to the witness, a risk management plan allows a processor to level out what could otherwise be very different costs of milk products that could have been produced at significantly different times but are being sold to the customer at the same point in time. The witness noted more hedging of HTST products is done by end users, such as foodservice customers, not processors. The witness testified that while risk management is not a stated objective of the AMAA, a stable price, promotion, and growth of the sale of milk are, and the ability to use risk management tools results in stable prices and increased sales.

The witness testified IDFA would support a rolling average longer or shorter than 24 months, but the 12-month implementation lag is essential to allow for hedging. The witness testified Proposal 14 calculates the adjuster from August through July because long term Class I sales contracts between processors and retailers are often negotiated and entered into during the final months of the calendar year. To allow for effective hedging for those contracts, Class I processors would need to know at the time of the contract negotiations what the adjuster would be for the next calendar year. The witness supported Proposal 15 as an acceptable alternative to Proposal 14.

A dairy processor witness representing Schreiber Foods (Schreiber) testified in support of Proposal 14 or 15. Schreiber is a fluid milk processor primarily manufacturing Class II and Class III products, with approximately 5 percent of their products sold as ESL Class I products. The witness testified that over the past 20 years risk management has become a necessary tool for companies with exposure to dairy market volatility. The witness said that only since the change to the average-of mover in 2019 have milk processors had a viable way to manage risk. The witness testified that, in response to requests from foodservice and retail customers to manage Class I costs, Schreiber has offered Class I forward contracts since 2019. Prior to 2019, the witness said creating an effective hedge for Class I milk was challenging as it was unknown whether Class III or Class IV would be the mover. The witness stressed the change to the average-of allows purchasers to use a combination of Class III and Class IV hedge positions, which gives everyone in the supply chain the ability to control their market risk in a way that was not previously possible under the higher-of.

According to the witness, Schreiber hedges price risk for its ESL production through a combination of Class III and IV futures and swaps, and Class I swaps, which typically go out 12 to 18 months. Under Proposal 14, the witness explained, market participants will know the fixed adjuster in advance of the calendar year in order to conduct their hedging analyses for the coming year. If the Class I mover were to revert to the higher-of, the witness testified they would have to either find a different way to hedge or cease offering forward contracts on their ESL products.

A witness representing Nestlé USA (Nestlé) testified in support of Proposal 14. Nestlé is a fluid milk processor operating one plant regulated by the FMMO system. Nestlé procures milk from cooperatives using contract agreements, the witness testified, and offers its customers an annual fixed price contract for their primary Class I product, an ESL product. The witness stressed the importance of hedging to manage risk and compete in the market against nondairy beverages. The witness stated Nestlé did not use hedging for Class I under the higher-of mover because not knowing which class price would be higher caused uncertainty. The witness testified Nestlé currently hedges all its Class I milk purchases using Classes III and IV futures contracts, and while they have an 18-month outlook they typically hedge Class I milk 6 months out. If USDA returns to the higher-of mover, the witness testified, Nestlé would not be able to continue hedging its Class I milk. The witness testified price volatility has specific impacts on ESL products, as it is challenging for retailers to set different prices due to monthly milk price fluctuations for two identical products sold at the same time but produced in different months.

A witness representing Lamers testified in support of Proposals 14 and 15 stating those proposals would help smooth out the volatility in the pricing of Class III and Class IV.

In its post-hearing brief, IDFA reiterated the importance of hedging to processors for managing price risk and volatility and claimed effective hedging could only be achieved with an average-of mover. IDFA noted that when price uncertainty does not allow fluid milk processors to manage risk 6 to 12 months out, they risk losing shelf space to plant-based and other alternative beverage products that can offer fixed prices. IDFA argued that the choice for a fluid milk processor, especially with respect to ESL products, higher value-added products, and foodservice, is increasingly between offering stable pricing and long-term contracts demanded by customers or losing shelf space to competing beverages. Pricing stability and long-term contracting are facilitated by hedging, according to IDFA. IDFA stressed the growing need for Class I hedging because of increased volatility between the manufacturing classes.

In response to criticism of Proposal 14, IDFA wrote the average-of mover does not create price inversions or lead to milk not being pooled, arguing depooling occurs because of the price relationships between classes, and is caused by negative PPDs and pooling requirements. IDFA also wrote that the average-of mover does not increase price volatility, unlike a higher-of mover which routinely and unpredictably switches between Class III and Class IV. Finally, IDFA asserted the value of Class I products is not necessarily related to the value of Class III or IV products, thus, the higher-of does not better reflect the value of milk than the average-of mover.

NAJ submitted a post-hearing brief in support of Proposal 14, arguing it better protects long-term producer milk revenue, provides less Class I price volatility, and preserves equitable risk-management opportunities for Class I handlers who are required to participate in the FMMO system. NAJ noted the perception a return to the higher-of mover would produce higher producer Class I revenues is based on highly divergent Class III and IV price movers and an expectation this will continue in the future. However, NAJ argued in its brief this price divergence analysis does not account for composition factor amendments nor potential Class I differential amendments. With revised composition factors, NAJ asserted, a restored manufacturing to Class I price spread would mitigate price inversion and depooling.

A MIG witness testified in support of Proposal 15 seeking to amend the average-of mover from a $0.74 adjuster to a rolling 24-month adjuster with a 12-month lag. The witness claimed the movers contained in Proposals 14 and 15 provide similar base Class I skim milk prices and have similar effects on producer prices. The witness explained in certain years Proposal 15 would return more money to farmers than the higher-of, and even if farmers do not experience the benefits of a high manufacturing price immediately, they will over time through the lagged adjuster. The witness presented data comparing the monthly average base Class I skim milk price calculated under the current mover, the higher-of mover, and Proposal 15 from 2003 to 2022 to show Proposal 15 would be revenue neutral in the long run.

The MIG witness testified Proposal 15 preserves risk-management opportunities for both producers and Class I processors, which is part of orderly marketing. The ability to hedge Class I milk became effective in 2019, followed by the pandemic and regulatory uncertainty as to whether the average-of would remain, and time, resources, and lack of knowledge slowed the adoption of Class I risk-management strategies, the witness testified.

Five MIG member witnesses representing fairlife, HP Hood, Turner Dairy, Shehadey, and Crystal Creamery testified on the importance of hedging Class I milk. The fairlife and HP Hood

witnesses said they primarily process ESL products, which they hedge using CME Class III and IV component and commodity futures. The HP Hood witness stated they do not hedge HTST milk because it is primarily sold through direct store delivery where the standard business practice is monthly pricing. However, ESL products are distributed primarily through grocery warehouses and buyers expect 60 to 90 days' notice for any price changes, the witness said. The HP Hood witness stated the ability to hedge has not changed their ESL pricing strategy but has allowed for fewer price increases. In earlier testimony a witness representing Shamrock, also a MIG member, said they manufacture both HTST and ESL products and hedge milk used in their ESL products.

A processor witness representing Shehadey testified contracts with retailers such as grocery stores use a fixed formula that changes monthly, quarterly, or semi-annually, and are based on FMMO prices. The witness testified Shehadey has only HTST Class I milk products and they do not use any form of risk-management tools to hedge their risk. The Turner Dairy and Crystal Creamery witnesses said their companies primarily process HTST Class I milk products which they currently do not hedge. Both witnesses expressed value in hedging HTST milk sold to foodservice, as foodservice customers prefer to know prices months to years in advance. The fairlife and HP Hood witnesses testified hedging under the higher-of mover was difficult due to price volatility and uncertainty, but the average-of mover allows them to offset the risk. The witnesses also testified it takes time to develop a robust hedging program. The HP Hood witness stated Class I hedging is primarily used by more sophisticated operators, but as Class I hedging becomes more accepted, the market should become more liquid, and more processors will likely use this risk-management tool. The fairlife witness said fairlife typically hedges its ESL Class I products, mainly 0 to 6 months out, but contracts could extend up to 12 months.

A MIG witness explained that the adoption of Proposal 15 would allow for less price volatility throughout the market and support industry growth by stabilizing the cost of milk for retailers and consumers. Hedging, the witness said, is important to offering customers and consumers a more stable price, which could stem the declines in fluid milk as fluid milk competes with many beverages in the market. The fairlife witness testified that price certainty translates to price stability for both the retailer and the consumer. The HP Hood witness testified the goal of hedging is not to make a higher return, but instead to act as price risk insurance by removing some input price volatility and increasing margin certainty for end-product sales. The Turner Dairy witness testified the average-of mover results in more price stability which is beneficial to the Class I market. The witness said under the higher-of formula, the Class I price went up with every spike in butter, cheese, or powder markets, even though short-term changes in those product prices have no direct effect on the actual Class I market. The witness argued the price spikes necessitated raising prices to cover cost, without a market-based explanation to provide to customers.

The MIG and fairlife witnesses testified in support of the 12-month lagged adjuster contained in Proposal 15, stating it is critical to allow Class I processors to mitigate risk and hedge successfully. Knowing the adjuster 12 months in advance allows companies who hedge to reduce or eliminate basis risk, the witness said, while the 24-month rolling adjuster updates and provides dynamic market signals. The witnesses said Proposal 15 would stabilize prices by moving gradually and make fluid milk products a more reliable and steady purchase for customers. Proposal 15 has no floor or ceiling, as the witness testified MIG members believe floors and ceilings can create price distortions. The witnesses testified a lookback of less than 24 months would create more volatility, while a longer lookback does not transfer market signals well over time. The fairlife witness testified the 12-month lag is necessary to be able to buy futures 12 months out. The 24-month rolling average adjuster allows the system to recognize the difference between Class III and Class IV prices and what the higher-of mover would have been, the witness said, allowing the industry to know definitively what the premium structure is going to look like associated with the adjuster 12 months into the future.

In its post-hearing brief in support of Proposal 15, MIG argued USDA should first assess whether the current average-of formula has resulted in disorderly marketing. MIG wrote the current average-of mover ensures the market has sufficient milk for both fluid and manufacturing uses and there is not disorderly competition for fluid market access. MIG argued a return to the higher-of under Proposal 13 would not provide higher returns to farmers, estimating a minimal impact of a $0.01 to $0.02 per cwt increase in the long term. However, MIG argued in its brief, the return to the higher-of mover would have significant negative impacts on the Class I market and the entire dairy industry. There is no asymmetrical risk inherent in Proposal 15, MIG argued in its brief, unlike the present average-of mover formula.

According to MIG, the use of risk management developed primarily after the average-of formula was adopted and is likely to grow in the future. MIG stated Class I processors do currently use risk-management tools to hedge ESL products, as this sector has historically utilized more fixed pricing, meaning hedging can be more easily adopted. MIG stated many HTST customers, such as grocery stores, have become accustomed to the monthly fluctuations of pass-through pricing, but HTST customers, such as school lunch programs or USDA feeding programs, would benefit from the increased price certainty that comes with an average-of calculated mover. The industry has not yet had time to widely adopt risk management, MIG reiterated in its brief, and regulatory uncertainty due to this proceeding has caused processors to hesitate further use of risk-management tools.

MIG noted in its brief that even though the AMAA does not specifically provide for hedging, a Class I formula that supports hedging helps serve the enumerated purpose of the AMAA of avoiding unreasonable price fluctuations and reducing milk price volatility. When Class I processors can better manage risk, they can offer more stable prices to customers and consumers, MIG argued in its brief.

In its brief, MIG reiterated hearing testimony that use of an average-of mover best ensures an orderly market, and sufficient supply of milk for fluid use, including the most accurate pricing signals for dairy farmers in a longer, and more appropriate, time. MIG took exception to arguments that the Class I price be used to address price inversions and depooling. Using a California pool example, MIG argued that record evidence shows the Department would have to increase the Class I price an impractical amount to incentivize both manufacturing classes to remain pooled. MIG reiterated many factors cause depooling and negative PPDs, and neither the Class I price nor use of an average-of mover drive those results. Rather, according to MIG, the main drivers of depooling in the months reviewed in testimony were the Class III/IV spread and advanced pricing.

In its brief, MIG argued a return to the higher-of mover will not help Class I handlers in competing for milk supply

as a higher pool obligation detracts from the incentive to service Class I plants. MIG reiterated hearing testimony that the current marketplace is sufficiently served using an average-of formula.

Lamers submitted a post-hearing brief in support of retaining an average-of mover. Lamers argued that because of the small percentage of Class IV use in the market, Class IV prices should not be a main driver for setting the Class I price, as an average-of mover is more representative of the entire manufacturing market. Lamers preferred the lower of the Class III and IV prices should be used when setting the mover as they believe the higher-of artificially raises Class I prices to consumers.

NMPF presented numerous witnesses who testified in opposition to the continuation of the average-of mover, embedded in the summary of their testimony and post-hearing brief presented above. An SMI witness opposed a modified average-of mover, testifying it would result in revenue losses to dairy farmers because the Class I price is paid back to dairy farmers over time and would not compensate dairy farmers that have exited the business.

Select expressed opposition to Proposals 14, 15, and 16 in its post-hearing brief. Select wrote that the higher-of more accurately reflects the value of milk in manufacturing classes, better manages shifts in demand for any one manufactured product, helps reduce milk price volatility, better addresses class price inversions and depooling, and makes it more difficult to draw milk away from Class I uses for manufacturing. Select noted most Class I handlers have not engaged in milk hedging under the average-of mover, and the average-of mover creates and exacerbates opportunistic depooling when Class III and IV prices diverge significantly. Select opined the average-of mover results in market disorder which they believe would continue until the higher-of mover is restored.

In its post-hearing brief, the AFBF opposed Proposals 14 and 15, arguing they do not address the key issue of class price misalignment. The AFBF believes handlers of all sizes can find alternative methods of managing risk under a higher-of mover.

A witness representing Edge testified in support of Proposals 16 and 17. The witness advocated for the adoption of Proposal 16, referred to as a Class III plus proposal, because the Class III price is typically higher than the Class IV milk price. In times of rapidly declining dairy prices brought on by a decrease in demand, the witness said, government recovery efforts typically prioritize more perishable products, usually Class III. The witness said this would result in higher Class III prices in relation to Class IV, and consequently a base Class I skim price under Proposal 16 approximately equal to the higher-of mover. According to the witness, in situations where the Class IV skim milk price is higher than the Class III skim milk price, any lost revenue would be redistributed to producers over the next three years through the adjuster and would better support dairy farmers during years of lower profitability. The witness testified risk management under Proposal 16 is easy to implement and less expensive due to high liquidity of Class III milk futures, creating more predictable prices and making fluid milk products competitive with plant-based beverages. The witness testified Edge would support a monthly rolling adjuster in place of an annual adjuster.

The Edge witness testified that as Class I utilization rates continue to fall, advanced pricing would continue to cause disorderly marketing conditions such as opportunistic depooling. The witness said advanced prices are antiquated and anti-competitive and their elimination would encourage fluid plants to use risk management. The Edge witness entered data showing the contribution of various factors to negative PPDs. The witness testified that while the change to the average-of mover tended to make PPDs more negative, advanced prices and the spread between Class III and IV influenced pooling decisions, not the adoption of the average-of mover. The witness testified that if the Class I price was announced at the same time as the Class III and Class IV prices, it would prevent a for-profit Class I trading relationship between Class III and Class IV, and the CME group would be more likely to create a Class I futures contract. The witness expressed a strong preference for Proposal 16, which they argue balances producer, processor, and consumer needs and supports risk management which they said was critical for the success of the nation's dairy farmers, particularly fluid sector innovators.

The Edge witness also testified in support of Proposal 17, returning to the higher-of mover without advanced pricing. The witness said the proposal would allow the Class I futures price to be equal to the greater of the Class III futures price and the Class IV futures price. Risk management players would have minimal risk in providing liquidity to Class I hedgers by spreading their position between Class I and the higher-of Class III or IV futures. The witness testified dairy producers may prefer the higher-of mover without advanced pricing, such as Proposal 17, as it provides real-time maximum income for Class I milk, whereas Proposal 16 is more of a compromise.

The Edge witness stated that since 2010, total fluid milk sales have been steadily declining, adding more instability and difficulties hedging under the higher-of mover. The witness entered data showing how much more risk and costs were involved to hedge under the higher-of mover than the average-of mover. The witness concluded a person hedging with futures contracts under the higher-of mover would have significant difficulties, but hedging under the average-of mover meets effectiveness standards required for hedge accounting.

Nine dairy farmer witnesses, located in Wisconsin, Minnesota, Iowa, and South Dakota, testified in support of Proposals 16 and 17. The dairy farmers opined Proposals 16 and 17 would decrease the frequency of negative PPDs and depooling, and enhance their ability to manage price risk through hedging and other risk-management programs. One witness said using only the Class III skim price to set the Class I skim price is the best option because Class III milk futures carry more liquidity than Class IV and better represent Class I prices. The witnesses testified Proposal 16 would help keep prices steady, benefitting both plants and customers.

In its post-hearing brief, Edge objected to what it believes are goals of some proponents to maximize FMMO Class I handler obligations in order for the additional revenue to be used to offset the negative producer impact of increasing make allowances. Edge argued the Department should consider the following factors in its decision: there have not been any significant shortages in the supply of beverage milk to retail stores; Congress' reason for changing to the average-of mover to facilitate risk management by fluid milk processors which fluid milk processors testified is still relevant; advanced pricing is outdated and no longer necessary to facilitate supply chain coordination but instead facilitates opportunistic depooling; a mover resulting in the highest fluid milk price when the Class IV price substantially exceeds Class III is not in the best interest of consumers; and a mover resulting in the highest fluid milk price when the Class IV price substantially exceeds Class III is not in the best interest of all dairy farmers. Edge argued dairy farmers located where Class I utilization is low may be worse off under a higher-of mover than an

average-of or Class III-based pricing as proposed by Edge.

Edge reiterated Proposal 16 would facilitate risk management by fluid milk manufacturers and large commercial buyers, eliminate outdated advanced pricing and reduce the incidence and magnitude of opportunistic depooling, and best serve both producer and consumer interests.

A witness representing the AFBF testified in support of Proposal 18. The witness said the AFBF believes orderly pooling is the key to orderly marketing, and this is best accomplished by the proper alignment of the four class prices. The witness claimed advanced Class I pricing leads to increased Class III component values, a common factor contributing to negative PPDs. The witness said advanced prices reflect market conditions that are 25 to 40 days older than final prices, which are announced after the close of the month. When a market rally occurs between the announcement of advanced and final prices, the witness said it leads to low or negative PPDs and creates incentives for handlers to depool milk. The witness stated depooling results in elevated component prices not being shared with the pool, further depressing the PPD and undermining the FMMO principle of uniform producer prices. The witness testified advanced pricing may also cause price inversions when manufacturing prices are rising rapidly, making it difficult for Class I handlers to attract adequate milk supplies. The witness entered data showing the effects of advanced pricing on class price alignment from May 2019 to May 2023 under the current average-of, and under Proposals 13, 17, and 18. The witness said this data showed many months under the current average-of mover and Proposal 13 in which the manufacturing class prices exceeded the Class I price, testifying this created disorderly marketing conditions. On the other hand, according to the witness, the data showed elimination of advanced pricing under Proposals 17 and 18 resulted in more consistent alignment of class prices.

The AFBF witness testified the frequency of published commodity data allows handlers to estimate price changes regardless of when prices are announced, and as more products are available on the CME or other exchanges, processors and manufacturers will have information needed to hedge and manage risk. The witness opined that the elimination of advanced pricing would allow for the introduction of Class III and IV spread options, providing an additional way to hedge Class I milk when both are used in combination. Three dairy farmers testified in support of Proposal 18, stating the proposal would reduce the incentive to depool brought on by low and negative PPDs.

The AFBF witness also testified that while they support the elimination of advanced pricing, they oppose Proposal 16 because it would delink Class I prices from Class IV prices, which they anticipate being higher than Class III in the future due to better export markets. The witness said tying the Class I price to only the Class III price could operate more like a ''lower-of'' formula. The witness stated the AFBF supports Proposal 17 because it is identical to Proposal 18 if combined with Proposal 13.

In its post-hearing brief, the AFBF reiterated its support for a return to the higher-of mover, which it argued would support class price alignment and substantially decrease negative PPDs and depooling.

The AFBF reiterated its hearing testimony that volatility has and continues to increase, contributing to price inversions and rapidly changing markets, resulting in competitive inequalities among dairy farmers. The AFBF said the CME has indicated a willingness to provide contracts catering to industry demand, and the fact that the industry is used to advanced pricing should not be a driving reason for its retention. The AFBF argued disorderly marketing conditions are present when producers do not receive uniform prices because of frequent depooling, and its proposals lead to the realignment of class prices, which encourage consistent pooling and uniform pricing.

An SMI witness, appearing on behalf of NMPF, testified in opposition to elimination of advanced pricing as contained in Proposals 16, 17, and 18. The witness said 90 percent of packaged fluid milk is highly perishable HTST milk which is processed, packaged, distributed, and sold in a relatively short period. The witness said these marketing characteristics require the price of the product to be known at the time of purchase, which advanced pricing of Class I milk provides. According to the witness, most HTST packaged fluid milk is priced monthly by fluid processors to their customers based on monthly FMMO Class I prices. This is materially different from cheese and butter products, the witness said, the prices of which are typically based on CME daily cash prices. According to the witness, advanced pricing enables retailers to set store milk prices at the beginning of a month, allowing the fluid processor to know the price the plant would receive for the packaged fluid milk prior to the raw milk being processed, packaged, and sold.

The SMI witness also testified that if advanced pricing was eliminated, retailers would not know their fluid milk costs until the end of the month when FMMO Class I prices are announced. This would mean most fluid milk purchased by retailers would be sold during the month without knowing its minimum regulated price which, the witness said, from a retailer's perspective is not orderly marketing. The witness claimed that if there were significant month-to-month increases in the Class I price, retailers could seek price relief from the processor, and ultimately, cooperative suppliers, opening the potential for fluid milk processors in the same marketing area to have inequitable raw milk costs and non-uniform payments to producers. In its post-hearing brief, NMPF reiterated its opposition to the elimination of advanced pricing.

A witness representing IDFA opposed Proposals 16, 17 and 18. The witness objected to the elimination of advanced pricing as it would result in Class I handlers pricing milk products to their customer before knowing the minimum regulated milk price and impact a handler's ability to hedge. In its post-hearing brief, IDFA supported the feature of Proposal 16 that would create a predictable Class I price that could be hedged based off a hedged Class III price plus a known adjuster. However, IDFA maintained its opposition to the elimination of advanced pricing, arguing it is essential for non-hedging Class I handlers to know their milk cost before the start of the month. It is also an important part of planning for fluid milk retail customers to market milk, IDFA stated. IDFA noted in its brief that traditional fluid milk retail customers are not yet using hedging sufficiently to permit a regulatory change eliminating advanced pricing. IDFA reiterated their total opposition to Proposals 17 and 18 in that they would return to a higher-of mover and, according to the brief, eliminate any practical ability to hedge.

A MIG witness testified in opposition to eliminating advanced pricing. The witness said the industry is not yet using hedging sufficiently to permit this regulatory change, as advanced pricing remains critical for the dominant share of the fluid market as retailers expect to know the price in advance. The witness also opposed Proposal 16, which would price Class I milk solely off the Class III price. The witness said the proposal would delink the fluid milk supply and demand from Class IV which MIG believes is critical for balancing. The witness opposed Proposals 17 and 18 as

they limit risk-management opportunities for Class I processors. In its post-hearing brief, MIG reiterated its opposition to any proposal (Proposals 16, 17, and 18) seeking to eliminate advanced pricing, which MIG claimed is critical to Class I processors. MIG further argued that eliminating advanced pricing would negatively impact those market segments. With respect to Proposal 16, MIG expressed concern with pricing Class I milk solely off Class III prices as it would be a significant departure from the current practice and completely divorce fluid milk supply and demand from the Class IV market. According to MIG, the record contains testimony from cooperatives that Class IV remains the ultimate balancing utilization.

In testimony and in its post-hearing brief, MIG opposed a return to the higher-of mover under Proposals 13, 17, and 18 as it would severely limit risk-management opportunities. MIG argued in its brief that a return to the higher-of is unnecessary and not supported by the facts as the industry has acknowledged the higher-of does not work. Dairy farmers' concerns are not about the average-of, MIG asserted, but rather the fixed $0.74 addition. USDA should support moving the industry forward, not revert to an outdated policy because it is familiar, MIG stated.

MIG argued NMPF introduced no evidence the average-of mover hinders a sufficient supply of milk for fluid uses. Rather, MIG wrote, a return to the higher-of mover would result in disorderly marketing as larger spreads between Classes III and IV would lead to higher prices under the higher-of mover and raise the uniform price, incentivizing the lower-priced manufacturing milk to remain pooled. In that situation, MIG argued, FMMOs should not be raising the uniform price paid out to the lower-priced manufacturing class, thus, encouraging it to remain pooled. This compensation, argued MIG, overvalues the lower-priced manufacturing milk in the marketplace and incentivizes milk to move to the lower manufacturing class instead of to a higher performing class. According to MIG, the average-of mover would better move milk between the manufacturing classes as the market needs. MIG argued the FMMOs are designed to ensure processors have sufficient milk supplies for fluid use, but FMMOs should not be drawing milk away from Class III or IV when a manufacturing use would be the highest and best value for the milk. According to MIG, Class I does not need more milk, and FMMOs should not be disrupting the market to pull milk for fluid utilization. MIG argued in its brief that revenue neutrality is not a valid policy consideration without evidence to establish revenue neutrality is necessary to ensure a sufficient supply of fluid milk.

A witness representing Lamers testified in opposition to the elimination of advanced pricing in Proposals 16, 17, and 18. The witness stated Class I handlers need to know prices in advance so they can set wholesale pricing with their retail customers.

In its post-hearing brief, Select opposed the elimination of advanced pricing set forth in Proposals 17 and 18, arguing that testimony at the hearing made clear that the majority of producers prefer using the higher-of, and the majority of handlers prefer to maintain advanced pricing which Select believes is in the best interest of stability in the Class I market.

Class I and Class II Differentials

Numerous witnesses appeared on behalf of NMPF testifying in support of increasing the Class I differentials as provided for in Proposal 19. Witness testimony centered around the themes of increased hauling costs, changes in milk supply and demand locations, changes in supply patterns resulting in longer hauls, and insufficient over-order premiums to cover the full cost of servicing the Class I market. The witnesses said the outdated assumptions embedded in the current Class I differentials threaten the willingness of milk suppliers to serve the Class I market.

An NMPF witness argued current differentials are antiquated, since, other than the three southeast FMMOs, they have not been updated in almost 25 years. In that time, they said, fuel costs and hauling distances have increased due to changes in supply and demand locations. The witness stressed over-order premiums should not be considered an effective substitute for FMMO prices because they are very difficult to obtain and maintain at levels adequate to cover the cost of servicing the Class I market. The witness argued inadequate Class I differentials contribute to price inversions and incentives to depool, which further jeopardize the availability of milk to meet Class I demand.

The NMPF witness described the methodology used to arrive at the proposed differential levels. According to the witness, NMPF requested an update of the U.S. Dairy Sector Simulator Model (USDSS) which was used during Order Reform as a basis for the differential levels adopted January 1, 2000.

The USDSS model owners testified on the USDSS methodology, the updated data and parameters, and explained the results. They explained the USDSS model evaluates the geographic value of milk at fluid milk processing plants across the U.S by finding the lowest cost solution of assembling milk at farms and delivering it to plants. They said the model accounts for approximately 90 percent of the U.S. dairy processing and manufacturing plant capacity, and considers such factors as milk supply locations, transportation costs (both variable and fixed) associated with raw milk assembly, final and intermediate product distribution, per capita demand by county population, and road weight limits. In the model, plant capacity, products produced, and milk components demanded at each plant are constrained by a variety of government and private sources. The resulting values, said the witnesses, represent the value of an additional load of milk at a specific plant location (otherwise known as the ''marginal value'').

The witnesses said two sets of USDSS results were provided to NMPF, May and October 2021, to provide marginal values for both flush and deficit months. According to the witnesses, the results suggest considerable differences between the values of milk at fluid plants derived from spatial economic modeling and current Class I differential values, with differences as large as $3.00 per cwt in some locations. The witnesses attributed these differences to changes in the location of milk production, the composition of dairy product demand, changes in the location of dairy product demand from regional population shifts, and the cost of transportation. Both witnesses discussed how modeling, even though complex, is a simplification of reality and that there may be unaccounted factors in some areas that would justify deviations from the model results, including local traffic congestion, geography, infrastructure restrictions, and price alignment across orders. The witnesses said the model does not account for other factors, such as existing business relationships and FMMO regulations, because they could cause a departure from a market efficient solution. Lastly, the witnesses noted the USDSS does not produce a base differential value; it merely provides the additional value needed to move milk to a particular location.

While NMPF cooperative member witnesses testified on how they used the USDSS results to arrive at the proposed differentials, NMPF witnesses stated they followed the same iterative process applied during Order Reform, starting

with USDSS results and adjusting for milk movements, plant locations and historic price relationships.

One witness said NMPF started with a base differential assumption of $1.60 per cwt, as currently contained in the Class I differentials. The witness said the costs embedded in the base differential (Grade A maintenance, balancing, and a competitive factor) are still applicable and those costs have not decreased over the past 25 years. The witness said the base differential should also serve to limit class price inversions, incentivize Class I milk deliveries, and ensure class price alignment. To accomplish these goals, the witness said that in some parts of the country the base differential is recommended to increase to $2.20 per cwt.

One NMPF witness testified regarding the dairy farmer cost of maintaining Grade A status. The witness said that in order to participate in the FMMO program, dairy farmers incur costs associated with obtaining and maintaining Grade A licenses. The witness was of the opinion partial cost reimbursement for maintaining a Grade A license, which currently represent $0.40 per cwt in the base differential, should continue to be provided. The witness detailed standards for maintaining Grade A status, which include various infrastructure maintenance and sanitation requirements, and estimated a total current cost of $1.30 per cwt to meet those requirements.

A series of NMPF witnesses testified on the regional considerations factored into the proposed Class I differentials contained in Proposal 19. During their testimony they also touched on balancing costs faced by NMPF cooperative members and the continued need to include a competitive factor in the base differential. One witness described how the average of the May and October 2021 results was used as a starting point. From there, NMPF formed regional committees to evaluate the USDSS average results and use their local market knowledge to derive the final proposed differential values. According to the witness, a series of 19 anchor cities were selected for their proximity near the border of where two regions abutted. The regional committees used these anchor cities as common starting points to design a final Class I differential surface that ensured price alignment between orders. Each committee looked at current price relationships between plant locations and consumer demand areas, compared those to the USDSS averages, and designed a Class I differential structure that accounted for factors NMPF members thought were not adequately addressed in the USDSS results.

Northeast

A DFA witness testifying on behalf of NMPF discussed the changes in the Northeast marketing area, including increased hauling costs, changes in the milk production and location of farm and fluid processing plants, and an overall increase in production costs. The witness said milk production in 11 of the 12 northeast states declined from 2000 to 2022, except for New York which saw a 31.4 percent increase, resulting in a small overall increase in the region's milk production of 2.2 percent. During this time, the witness said the resident population increased by 9.1 percent. The witness noted the geographic shift in where milk is processed due to the closure of fluid plants in urban areas since 2000. The witness surmised local milk supplies in the northeast are used to meet increasing Class II and Class III needs, necessitating milk to travel farther distances to meet fluid demand. The witness estimated transportation costs paid by producers in the region have increased $0.70 per cwt.

An Agri-Mark witness also testified regarding the changing marketing conditions in the northeast region and described some of the proposed differential differences from the USDSS model. The witness opined that if the USDSS averages were adopted for Maine, it would incent producers in Maine to service Massachusetts, instead of remaining available to meet local demand. Therefore, the witness said NMPF is proposing to flatten the differentials in Maine to maintain current competitive relationships. NMPF is also proposing lower differentials in northern Vermont and New York in order to incent milk movements south and east. The witness said these changes from the USDSS average results are needed to preserve current milk movements and to maintain competitive relationships.

Mid-Atlantic

An MDVA witness representing NMPF testified regarding the proposed differentials in the Mid-Atlantic region. The witness said MDVA operates two balancing plants in the region that help balance the market's reserves in both the Northeast and Appalachian FMMOs. According to the witness, there are large seasonal swings in milk delivered to those balancing plants, which result in significant cost to the cooperative and its members. The witness was of the opinion the base Class I differential should provide some balancing cost reimbursement to its members through its distribution through the marketwide pool. Transportation costs have also increased significantly, the witness said, to a point where Class I differentials are less effective in attracting milk from reserve supply areas to Class I plants. In order to meet fluid demand, the witness said cooperative members must pay for the additional cost through milk check deductions without any additional compensation through the Class I differential.

The MDVA witness compared current and USDSS average values for multiple plant locations in the region. According to the witness, the regional committee focused on the need to cover additional transportation costs of servicing the fluid market and maintaining current price relationships as principles when determining deviations from the USDSS average results. One example cited two plants in Landover, Maryland and Frederick, Maryland, located approximately 55 miles apart with a current difference in differential values of $0.10. The witness said the USDSS average would have resulted in a $0.35 difference and created an artificial regulated cost advantage for the lower zoned plant in Frederick, Maryland. Another example was in the southeastern region where two Virginia plants located 15 miles apart and currently in the same differential zone would have seen a $0.10 differential difference under the USDSS model average scenario. In this case, said the witness, the committee decided to propose the same differential value for the two plants in order to preserve their competitive relationship.

Southeast

A DFA witness representing NMPF testified on the proposed differentials in the southeast region. Similar to other witnesses, their testimony centered on the decline in dairy farmers and the closure of fluid processing plants which necessitate longer milk hauls at a greater expense to dairy farmers, particularly cooperative members. The witness spoke to the unique marketing conditions in the southeast region, with a growing population, local fluid demand, and a significant milk supply deficit requiring supplemental milk supplies to be acquired from outside the region. The witness said the supplemental milk supplies are obtained at great expense to DFA cooperative members. The witness stated it is typical for supplemental loads to travel between 500–650 miles or more, and while the transportation credits in the Southeast FMMO provide partial reimbursement, the fund is

inadequate to cover the full cost. The witness said the proposed differentials contained in Proposal 19 would assist in covering transportation costs and support dairy farmers who supply the region.

Florida

An SMI witness representing NMPF testified on the proposed differential for the Florida FMMO. The witness said there is an inadequate milk supply available in Florida to meet its Class I needs, necessitating significant volumes of milk deliveries from outside the marketing area, notably Georgia. According to the witness, Florida milk production is quickly shrinking, declining more than 10.9 percent in 2022, and necessitating more than 24 percent of its milk needs to come from other states.

The witness discussed Florida's significant population increase and high Class I utilization, which has averaged greater than 82 percent since 2000. The witness described significant seasonal swings in fluid milk needs and SMI's efforts to balance those needs through purchasing additional milk tankers, marketing milk to non-pool plants at below FMMO values when needed and buying supplemental loads at above FMMO values during other times of the year. The witness said weather and the seasonal population influx also complicate the region's milk balancing efforts. These dynamics make supplying the Florida region particularly expensive, estimating that SMI balancing costs for the first half of 2023 were $1.33 per cwt.

The SMI witness testified the proposed Florida differentials maintain the historical differential slope while more adequately reimbursing for transportation costs, which the witness estimated has more than doubled in the past 20 years, from $2.31 in 2002 to $5.98 in May 2023. The witness said the Florida differentials contained in Proposal 19 are similar to the averages of the May and October 2021 USDSS results but were adjusted to preserve current competitive relationships. As a result, the witness concluded the region would be assured an adequate supply of milk for fluid use and fluid milk buyers would be better assured of equal raw product costs.

The SMI witness was of the opinion the differentials should not be adjusted to reflect recently enacted Distributing Plant Delivery Credits in the Florida FMMO, as both are needed to ensure adequate supplies of fluid milk for the region.

Southeast/Southwest

A Lone Star witness representing NMPF testified regarding the differentials between the southwest and southeast regions. The witness said the eastern portion of the Southwest FMMO and the three southeastern FMMOs are milk deficit regions. The witness emphasized the differential recommendations are designed to provide proper financial incentives through a steeper differential slope to move milk into and within those regions. The witness said other factors considered included keeping current city to city price relationships as well as competitive relationships between plants often clustered around metropolitan areas. While differentials in some areas were increased relative to the USDSS average to reflect NMPF member knowledge of milk movements and related transportation costs in the region, other differentials were lowered. The witness noted NMPF members believe the USDSS overestimated balancing costs for parts of Virginia and the Carolinas, and subsequently is proposing muted differential increases for those regions.

Regarding Florida, the witness said the NMPF members accepted the USDSS model average output of $7.90 as the differential for Miami, Florida. They then worked up through the state with a priority of maintaining competitive relationships between plants. The only deviation the witness noted was Myakka City, Florida, whose current differential is $0.40 higher than plants in the Tampa-Orlando corridor. The witness was of the opinion the spread was too large, and consequently Proposal 19 recommends the spread be reduced to $0.20.

In the southwest region, the Lone Star witness said, milk must move significant distances from the supply region in the Texas panhandle and eastern New Mexico to the demand centers in east Texas. The witness said milk routinely travels anywhere from 400–650 miles to service the fluid needs of the state and stressed the current differentials in the region are inadequate in covering transportation costs for these routine milk movements. Consequently, Proposal 19 generally contains higher proposed differentials than the USDSS model average, with greater increases moving northwest to southeast to incent milk to move where needed. The witness added there is a single differential level proposed for New Mexico, reflecting what the witness said was primarily a captive in-state market for milk.

Mideast

A DFA witness representing NMPF testified in detail on hauling assembly costs associated with the Mideast marketing area. The witness described the region's principal supply areas as central and northeast Michigan, northern Indiana and northwestern Ohio, and fluid demand areas centering around the region's large cities of Detroit, Grand Rapids, Indianapolis, Columbus, and Pittsburgh. The fluid plants compete for a milk supply with the numerous small to medium-sized cheese plants in northeast Ohio, two large cheese plants in central and western Michigan and one large cheese plant in western Pennsylvania, explained the witness.

The DFA witness testified the Mideast region has increased milk production 20 percent over the last 23 years, while simultaneously seeing a 66 percent reduction in dairy farms. The region's Class I utilization was 37 percent in 2022, supplied by approximately 33 distributing plants, down from 57 in 2000. The consolidation in both the supply and demand sectors, increased hauling distances to fluid plants, along with a robust manufacturing sector, has created challenges in encouraging milk to meet fluid demand.

The DFA witness estimated that Ohio assembly and delivery costs have increased approximately 69 percent from 2006 to 2023, attributing most of the increase to fuel, labor and equipment costs. The witness said current differentials do not provide enough financial incentive to move milk from supply regions to Class I plants. As a result, said the witness, the cost of supplying fluid milk needs is largely borne by cooperatives and their members.

For the Mideast area, the DFA witness said the committee concentrated on a selected group of larger cities in the region to analyze the relative value differences. The overall objective was to determine the value needed to encourage milk to move from milk supply areas in the north and west to areas of demand. The committee started with Chicago, Illinois, and determined that even though no fluid plants operated in the Chicago region, its differential should align with prices of locations that supply packaged milk, which are Grand Rapids, Michigan, Cedarburg Wisconsin, Rockford, Illinois, and Dubuque, Iowa. The committee ultimately determined a $3.10 differential appropriate for Chicago (Cook County). From there, the witness reviewed a series of city pairs and provided justification for why the

proposed differentials were adjusted from the USDSS model average. Reasons given for the changes centered on distance from larger population centers and/or milk supply areas and providing enough financial incentive, in the committee's opinion, to encourage milk to move where needed. The witness mentioned another consideration was the willingness of milk haulers to deliver, referring to resistance of milk haulers to make the long hauls needed to deliver milk to central Ohio, for example.

The DFA witness also detailed considerations for proposed differentials in western Pennsylvania, centering around plants in the Pittsburgh area, and plants in southwest Ohio and eastern Indiana. They said differentials were adjusted in those areas to account for what the committee believed were current competitive relationships. The witness said that, ultimately, the committee recommended more slope than the USDSS model by reducing the differential increases in the milk surplus areas of Michigan and increasing the slope when moving to the south and east.

Another DFA witness spoke to increased hauling costs in the Mideast area. The witness said that as the number of dairy farms in the area has declined, so has the number of available milk haulers. Compounding the issue is competition with other industries who also rely on commercial haulers. As a result, milk hauling rates have increased as the fewer number of milk haulers must travel farther distances to assemble and deliver milk loads. The witness presented data on various factors that contribute to overall transportation costs, such as wages, diesel fuel prices, and equipment purchase costs.

A witness from the Michigan Milk Producers Association (MMPA) testified on the unique Michigan marketing conditions that resulted in deviations from the USDSS model output. The witness said Michigan has experienced significant milk production growth, accounting for 68 percent of the region's growth. Michigan milk production serves as a reserve supply for states south and east, which are considerably longer routes than when the differentials were adopted in 2000, said the witness. They testified current differentials are no longer adequate to cover current transportation costs and highlighted how the large flat differential zone in Michigan, covering 525 miles, makes it difficult to encourage milk to travel farther distances to supply fluid demand instead of satisfying local manufacturing plant demand. Therefore, NMPF proposed more, smaller pricing zones within the state to better reflect the cost to move milk. The witness estimated MMPA's hauling cost for transporting milk from mid-Michigan to eastern Ohio, approximately 287 miles, was $1.06 per cwt per 100 miles.

The MMPA witness testified that is has been more difficult to obtain over order premiums to cover increased costs because national retailers with more bargaining power have replaced local independent stores. Consequently, the witness said, national retailers with a wider geographic footprint and higher milk volume needs have put downward pressure on premiums. The witness concluded that increasing Class I differentials to better reflect the cost of supplying the fluid market would be more equitable than an increasing reliance on a dairy farmer's ability to negotiate over-order premiums in a magnitude large enough to fully cover costs.

Upper Midwest

A Prairie Farms witness representing NMPF explained the proposed Minnesota and Wisconsin differentials. The witness said the USDSS results had too much slope between the states that would have created too much financial incentive to move milk out of Minnesota, creating difficulties for Minnesota plants to compete for a milk supply. Consequently, the witness said NMPF is proposing fewer differential zones in the Upper Midwest region to ensure a local supply could be maintained. Further, in that region, NMPF was cognizant to propose differential levels that would minimize negative impacts on producer blend prices. This witness opined the differentials contained in Proposal 19 would not fully cover the cost of moving milk the long distances required to service the fluid market in regions where they operate. However, they said, the proposed differentials would encourage the availability of adequate milk supplies to support milk demand in distant markets.

Central

The Prairie Farms witness also testified on the proposed Class I differentials in the Illinois, Iowa, Missouri, and Nebraska areas. The witness said that in the last 20 years the cooperative has become more dependent on supplemental milk supplies to serve markets in Illinois and Missouri, while Iowa has lost milk processing capacity in the eastern half of the state due to plant closures. In addition, the decline of milk production in southeast Iowa has made it more difficult for Prairie Farms to stair step milk into the Appalachian and Southeast FMMOs to meets its supplemental milk needs. All these factors have contributed to changes in the region's milk movements and increased producer hauling costs, stressed the witness. The witness reviewed several equidistant Prairie Farms hauling routes and highlighted the disparity in differential gains. For example, some routes traveling approximately 300 miles may see a differential gain of $0.90, while other routes traveling a similar distance may only see a gain of $0.25. The witness stated the region's differentials need to be adjusted to remove some of the disparity and provide adequate financial incentive to supply fluid plants located in the south and east. The Prairie Farms witness said their cost to move milk to its four southern and southeastern fluid plants was approximately $5.25 to $5.50 per loaded mile, and costs to supply plants in central Illinois is similar.

A DFA witness also testified to differentials proposed for the Central FMMO region. The witness echoed other testimony regarding decreased farm numbers, longer distances traveled, and increased hauling expenses. The witness estimated DFA hauling costs in the region have increased 151 percent from 2005 to 2022. The witness spoke to the proposed differential increases in the region. Proposal 19 would increase the current differential values by $1.35 in Kansas City, $1.15 in Omaha and $1.65 in Wichita. The witness elaborated that the higher increase in Wichita reflects the area's lack of an adequate local milk supply. More specifically, the witness stated that only 27 percent of Wichita's demand is delivered from within a 150-mile radius, while in Kansas City and Omaha, 47 percent and 55 percent, respectively, comes from within 150 miles.

Numerous NMPF witnesses testified about the proposed Colorado differentials. One DFA witness testified the USDSS model overestimated the amount of milk in Colorado available to meet the State's fluid needs because of private contractual relationships with manufacturing plants. Consequently, NMPF recommends deviations from the model to recognize current competitive relationships, said the witness. The witness also discussed population, milk production, and fluid demand similarities between Denver and other regional cities to justify increasing the Denver area differentials to more closely align with differentials in those cities. The witness said adoption of the USDSS model output for Colorado, without adjustments, when combined with other

changes that could result from this rulemaking would result in significant, unsustainable decreases in producer pay prices and, thus, blend price equity must be considered when making differential adjustments.

Other DFA witnesses spoke in more detail on the potential producer price impact on Colorado dairy farmers. The witnesses testified hauling and feed costs in Colorado are higher than other parts of the region, which they believe were not properly reflected in the USDSS model. One witness said producer prices in Colorado currently exceed those of the FMMO's base zone, however, if the USDSS model average were adopted, it would result in producer blend prices lower than prices announced at the base zone, causing significant financial harm to Colorado dairy farmers.

Arizona

A United Dairymen of Arizona (UDA) witness representing NMPF testified in support of Proposal 19. UDA is a dairy farmer-owned cooperative association, with 36 cooperative members and a manufacturing plant located in Arizona. The witness cited many factors, such as weather, climate, transportation, fuel, and increased costs of producing Grade A milk as challenges for Arizona dairy farmers. The witness stressed the costs of maintaining Grade A status in the State exceeded $2.35 per cwt. According to the UDA witness, the proposed Arizona Class I differentials: generally follow the USDSS model, with deviations made to reflect local market conditions; maintain current price relationships between handlers within Arizona and the surrounding states; and establish a smooth differential transition from surrounding areas.

The witness noted UDA operates a plant in Tempe, Arizona, that serves as a balancing plant for the market. The witness said the cost of operating the plant does increase in the summer months as less milk volume is run through the plant when milk supplies are lower.

California

A CDI witness testified on the process for determining the proposed California differentials. The witness said the goal of the California differentials was to recognize regional cost drivers and local market conditions unique to servicing California urban areas, and to maintain price relationships with surrounding states. In the witness' opinion, the USDSS model did not account for the impact on producer prices, which could alter pool stability and incentives to supply the Class I market, and region-specific cost drivers such as geography or traffic. Those considerations form the basis for the deviations from the USDSS model output NMPF proposed.

The CDI witness provided an overview of the similarities between the California Central Valley and Upper Midwest milksheds to justify the position that the lowest differential in both regions should remain similar. For that reason, said the witness, NMPF proposes a minimum differential zone of $2.50 in California, which is similar to the lowest Upper Midwest differential zone of $2.55. The witness also discussed dwindling milk supplies, increased population, pervasive traffic congestion, and the closure of manufacturing plants in southern California as reasons for making adjustments. The witness described changes made in three California regions (Central Valley, Bay Area, and Southern California) to provide incentives for dairy farmers to serve the Class I market in the urban areas.

A DFA witness also testified on California and Northern Nevada proposed Class I differentials. The witness advocated the maintenance of competitive equity between Class I and manufacturing plants in northern Nevada and California counties. The witness was of the opinion the USDSS model fell short in adequately capturing the cost of producing milk in California. The witness said the current 10-cent difference in zones is not sufficient as it does not reflect the actual movements of milk or unique California State regulations, taxes, geography, and high milk production costs. The witness stated the current differentials do not cover the hauling costs in a state with high gas prices, heavy traffic, and road weight limits. The witness supported testimony from the CDI witness justifying the proposed California differentials. The DFA witness also expressed northern Nevada counties have a historic competitive relationship with northern California, which should be preserved. The witness noted that Proposal 19 recognizes this dynamic by proposing a $2.90 differential for the region.

Pacific Northwest

A witness representing Northwest Dairy Association (NDA) testified on behalf of NMPF regarding the proposed differentials in the Pacific Northwest (PNW) region, which includes the States of Washington, Oregon, Idaho and Montana. NDA is a dairy farmer-owned cooperative that markets the milk of approximately 295 dairy farmers in Washington, Oregon, Idaho, and Montana, and conducts all processing and marketing operations through the wholly owned subsidiary Darigold. The witness described regional competitiveness at the farm level, ensuring incentives to service Class I markets, and geographic and population-influenced cost factors were the primary reasons the proposed differentials deviate from the USDSS averages. The witness was of the opinion proposed differentials in the PNW FMMO urban areas should mirror those of the Central FMMO, as the urban areas of the two regions operate similarly. To ensure competitive equity and the balancing needs of distinct areas within the region, the witness said Proposal 19 recommends fewer pricing zones than produced by the USDSS model.

The NDA witness also described market changes similar to those of other witnesses: declining milk production, increased population, longer haul distances, and increased transportation costs. The witness estimated NDA transportation costs for servicing PNW Class I plants has increased $1.10 per cwt in the last 15 years.

In regard to the unregulated areas of the Northwest, the witness used King County, Washington, as the base at $3.00 per cwt, and kept the zones the same as they currently exist. In counties with little to no milk production, the differential was reduced to as low as $2.20 in Idaho. For areas with higher milk production, the differentials are proposed at $2.55, reflecting the same level of differentials in South Dakota.

In its post-hearing brief, NMPF emphasized adoption of Proposal 19 was necessary to ensure Class I differentials would be more reflective of the current costs of supplying the Class I market. NMPF maintained that the proposal would result in Class I differentials below actual costs, keeping with the FMMO principle of minimum pricing. NMPF reiterated testimony given at the hearing regarding the continued relevancy of the costs associated with the base differential, and stressed the costs have increased since it was first adopted in 2000. NMPF reviewed its own testimony at the hearing on what it believes were the appropriate regional considerations used to propose deviations from the USDSS results. According to NMPF, adoption of Proposal 19 would only raise the regulated cost of Class I milk under FMMOs by slightly less than 8 percent.

NMPF reiterated the importance of Class I prices remaining the highest priced class to ensure producers move surplus milk to deficit regions to meet Class I demand. Without such pricing

hierarchy, NMPF stated, milk in the higher-valued use class would not be pooled and it would result in non-uniform prices to producers.

A witness representing the AFBF testified in support of Proposal 19. The witness concurred with NMPF testimony on the increased costs of servicing the market since the differentials were adopted in 2000. In offering support for the differential adjustments, the witness said the purpose of the USDSS model was to mimic an ideal market solution, so it would be expected that actual market costs are higher. The witness mentioned that given the seasonality of milk demand, it could be considered more appropriate to start with the USDSS October 2021 results, rather than the average. In its post-hearing brief, the AFBF stressed that regulated Class I differentials provide for long-term stability; something that cannot be assured if a larger portion of milk prices is negotiated through over-order premiums.

A witness representing IDFA testified in opposition to Proposal 19. The witness was of the opinion NMPF did not use a consistent methodology when determining differential level adjustments from the USDSS model results. Additionally, stressed the witness, some of the factors NMPF considered are not relevant and/or are unevenly applied (dairy farm production costs, private business relationships, blend price impacts, and regional dairy farm competitiveness), or were already factored into the USDSS model (transportation costs and maintaining handler equity). The witness was of the opinion that if milk suppliers and cooperatives experienced transportation costs higher than those provided for in the differentials, the additional cost reimbursement should be negotiated through over-order premiums with milk buyers. The witness also took issue with what they deemed an undefined base differential, which was proposed at $1.60 in some areas and $2.20 in other areas, with what they saw as no cost justification for the difference.

The IDFA witness argued the purpose of Class I differentials is to bring forth an adequate supply of milk for fluid use. According to the witness, with an FMMO Class I utilization of 27 percent, the current milk supply is more than adequate to serve Class I needs and there is no justification for increasing Class I differentials. The IDFA witness cited a recent retail milk demand study that found milk demand is elastic and, thus, the quantity demanded is sensitive to price changes. The witness argued any increase in price would not only hurt Class I sales, but also increase government purchase costs for milk used in nutrition and feeding programs. The witness stressed retail fluid milk sales have been declining and USDA should not hasten the decline by increasing Class I prices. The witness also added that eliminating or reducing the depooling of milk should not be a consideration when evaluating Class I differential levels. The witness said depooling is a necessary tool for manufacturing handlers when the Class III or Class IV price exceeds the blend price. They estimated that in some FMMO areas the Class I differential would have to increase to $41.32 per cwt in order to disincentivize depooling.

The IDFA witness was of the opinion that if USDA recommends differential increases, they should not be increased in the three southeastern FMMOs as those provisions already require fluid milk handlers to pay transportation credits and distributing plant delivery credit assessments to encourage producers to service Class I demand in those deficit markets. The witness estimated those assessments already account for approximately 42 to 46 percent of the differential increases contained in Proposal 19.

The IDFA witness also argued the $0.40 portion of the base differential attributed to maintaining Grade A status is no longer relevant given over 99 percent of all milk currently produced is Grade A. Consequently, said the witness, there is no longer a need to incentivize farms to become Grade A in order to service the Class I market and the base differential should be lowered to $1.20 per cwt.

Two witnesses representing IDFA, Saputo and Plains Dairy, testified in opposition to Proposal 19 and offered support for the arguments put forth by the IDFA witness. The Saputo witness said increasing fluid milk prices may reduce the retail price spread between fluid milk and plant-based products, further depress fluid milk sales, and ultimately force fluid plants to switch from HTST to ESL processing. The witness speculated a further decline in HTST facilities will force cultured products to be made elsewhere and increase costs to consumers. In regard to obtaining milk supplies, the witness said Saputo pays over-order premiums when necessary. The witness also opposed any increases in minimum regulated prices on the grounds that nonuniform increases would put some of its plants at a cost disadvantage. The Plains Dairy witness stated the increase from the model average results would impact consumer prices by $0.07 per gallon. Plains Dairy is a fluid milk processing facility in Texas.

A witness representing MIG also testified in opposition to Proposal 19 for many of the same reasons articulated by the IDFA witness. The MIG witness said NMPF failed to cost-justify any elements of the base differential, either at the $1.60 or $2.20 level, to support why it should be maintained. In echoing IDFA's arguments, the MIG witness also objected to NMPF's use of the USDSS averages as a starting point. As the FMMO system provides for minimum prices, the witness was of the opinion any evaluation of differential changes should start with the USDSS May model results, which represent the flush season for milk production. The witness said Proposal 19's problems are compounded because NMPF failed to use a consistent set of principles to justify its deviations from the USDSS results. In addition, many of the factors used to justify deviations, the witness said, were already factors considered by the model and, thus, are being double counted.

The MIG witness characterized the NMPF deviations as substantial and presented a series of maps to visualize the magnitude of the disparate changes. The witness also pointed to areas where price changes are more dramatic between neighboring counties, and suggested such price disparities could create incentives for disorderly marketing. The witness deemed the Proposal 19 differentials to be significantly different from current differentials, and argued the increases are being proposed despite a lack of evidence from NMPF that there is a shortage of milk available to meet Class I demand. Class I differentials should reflect the minimum cost of serving Class I milk, stressed the witness. If there are additional transportation costs not provided for under the current differential as alleged by NMPF, the witness testified, those would be reflected in negotiated over-order premiums in the market. Instead, many areas of the country have no over-order premiums, which the MIG witness interpreted as an indication that FMMO prices are not minimums, but price enhancing. Similar to the IDFA witness, the MIG witness was of the opinion no changes should be made to the differentials in the three southeastern FMMOs until the full impact of the recent amendments to the transportation credits and establishment of the distributing plant delivery credits are known.

Three witnesses representing Organic Valley testified in opposition to

Proposal 19. Organic Valley consists of 1,600 farmer-owners who produce certified organic milk, three dairy manufacturing facilities which make Class III and IV products and utilizes a network of co-packers to process and distribute Class I products. The witnesses opposed the NMPF proposed differentials as they would increase Organic Valley's obligation to FMMO marketwide pools.

The Organic Valley witnesses described the differences between the organic and conventional milk markets (both at the producer and processors level). They were of the opinion Proposal 19 fails to account for these differences and would result in inefficient milk movements if adopted. The witnesses countered arguments that the conventional market balances the organic market, claiming only around 2 percent of organic milk finds its way into conventional products.

A witness from Aurora testified in opposition to Proposal 19. Aurora is a vertically integrated organic milk supplier with four organic dairy farms located in Colorado and Texas. The witness was of the opinion no justification exists to increase Class I differentials as the areas surrounding the Aurora plants have adequate organic milk supplies, something that was not accounted for in the USDSS model. The witness explained the organic milk market and argued its structural differences from the conventional milk market make any change to the Class I differentials as applied to organic milk unwarranted. Similar arguments were made by a MIG witness on behalf of Danone and Crystal Creamery.

A witness for Maple Hill Creamery (Maple Hill) testified in opposition to Proposal 19. Maple Hill purchases grass-fed organic milk for processing and national distribution but does not own a fluid milk plant. The witness opposed the proposed Class I differentials and estimated their Class I marketwide pool obligation could increase up to 80 percent as a result. The witness made arguments similar to other organic processors and concluded that increasing Class I differentials would result in a choice between paying a lower organic fixed price to its dairy farm suppliers and jeopardizing supply, or raising retail prices and jeopardizing sales.

A witness representing Shamrock, a member of MIG, testified in opposition to Proposal 19. The witness said adoption of Proposal 19 would increase their raw milk costs anywhere from 29 to 62 percent. The witness testified Shamrock pays over-order premiums which they believe cover any additional costs associated with servicing their plants in excess of the Class I differential value. The witness noted an inconsistency in NMPF methodology, as the differential for their Virginia plant is proposed at the USDSS model average, while the differential at their Arizona plant is $0.65 greater than the average.

A witness for AE, a MIG member, also testified in opposition to Proposal 19. The witness was of the opinion NMPF had not provided justification for the Class I differential increases. They specifically objected to the Class I differential changes that would, in the witness' opinion, give its nearest competitor a $0.15 greater advantage than currently exists.

A MIG member witness for HP Hood testified in opposition to Proposal 19. HP Hood also operates four standalone Class II plants in the northeast. Similar to the AE witness, the HP Hood witness testified the proposed Class I differentials would create competitive disadvantages for their plants in relation to nearby cooperative owned plants. The witness criticized what they believe was the lack of uniformity used by NMPF in developing differentials that deviated from USDSS results. The witness said there are ample milk supplies to meet Class I needs and any increase in the Class I price would only serve to decrease fluid milk sales.

A witness from Turner Dairy, a MIG member, testified in opposition of Proposal 19. The witness objected to the continued relevance of the three base differential components. The witness said Turner Dairy has not had difficulty finding adequate milk supplies through its independent dairy farm supply. The witness said any Class I differential increases would be paid into the FMMO marketwide pool, not to its direct suppliers. The witness said this would make it harder to compete for dairy farm suppliers, particularly with competitors in the unregulated area to their east. Similar to other witnesses, the Turner Dairy witness detailed how the proposed Class I differentials would create competitive disadvantages for their plants relative to nearby cooperative plants, as well as decrease fluid milk consumption.

A MIG witness testifying on behalf of fairlife opposed Proposal 19. The witness argued that if more money is needed to attract fluid milk supplies, it should be negotiated in the marketplace, not mandated in FMMO pricing provisions. The witness said fairlife regularly pays over order premiums for even day receiving, transportation costs, and quality attributes. In the witness' opinion, there are ample fluid milk supplies and any increase in differential would only serve to create market winners and losers.

A witness from Shehadey, testified in opposition to Proposal 19. Shehadey operates four manufacturing plants in California, Nevada, and Oregon, producing Class I and Class II products. The witness argued the Class I differentials proposed for their plant locations should not be increased as the local milk supply is adequate to meet their fluid needs. The witness took particular objection with the disproportionate increase by the Fresno, California, plant in relation to their competitors located farther from the state's primary milk supply in the Central Valley. The witness added that their Oregon plant has a more distant milk supply relative to their other plants, and over-order premiums are used to compensate dairy farmers for the additional costs of servicing the plant.

A witness representing United Dairy, Inc. (United) testified in opposition to Proposal 19. United is a fluid milk processor operating three plants in West Virgina, Ohio, and Pennsylvania, which are primarily supplied by independent dairy farms. The witness testified their plants receive adequate milk supplies and pay over-order premiums when needed to ensure their milk needs are met. The witness opined the market should depend on over-order premiums, not unduly high regulated prices, to direct milk where needed. Similar to other witnesses, the United witness argued FMMO prices should not be increased because it would negatively impact Class I sales. The witness objected to the uneven application of differential increases, highlighting the differential increases for the United plants are higher than every other plant in the region, even when United has had no milk supply shortages. A West Virginia independent dairy farm supplier of United also testified in opposition to Proposal 19. The witness expressed concern the proposed differential increases would ultimately lead to the closure of the independent fluid milk processors in the State, leaving local dairy farmers with few, if any, local market outlets, and would widen the nutritional gap that already exists in the Appalachian area as higher prices would reduce fluid milk consumption.

A witness representing Lamer's testified in opposition to Proposal 19. The witness said increasing Class I differentials would not benefit consumers or processors as higher prices would lead to a decline in fluid milk consumption and the closure of more fluid milk plants. The witness was

of the opinion that limiting or disallowing the depooling of manufacturing milk would be a more beneficial change for all dairy stakeholders. A post-hearing brief filed by Lamers contended the hearing record contains no evidence of Class I demand not being fulfilled, thus any increase in Class I prices is not justified. The brief argued that if additional transportation costs of moving milk to Class I plants exist, they should be negotiated through over-order premiums.

A series of academic researchers testified regarding milk price elasticity. One researcher testified on behalf of NMPF regarding the potential impact to fluid milk demand as a result of regulated price changes. The witness referred to this as price elasticity, which estimates the percentage change in demand (quantity) due to a 1 percent change in price. The witness said any price elasticity less than the absolute value of 1 is considered price inelastic—a 1 percent change in price would result in less than a 1 percent change in demand—implying increased revenue due to the price change would more than offset the decreased revenue from fewer sales.

The NMPF witness reviewed 38 empirical studies, conducted between 1964 and 2022, measuring milk price elasticity at the retail level. The witness found the study average elasticity of 0.35 percent, and a median of 0.2 percent, concluding milk demand is inelastic. The witness said consumers remain price insensitive because milk continues to be considered a staple food. To illustrate its price inelasticity, the witness elaborated the real price of milk relative to all goods and services has declined 7 percent since 2013, during which time milk demand has decreased 18.3 percent. If milk was elastic, said the witness, a decline in price should have resulted in an increase in demand. The witness reviewed other factors which they believe are driving decreased milk consumption, including increased competition in the beverage market from new products and alternative beverages, an increase in the amount of food consumed away from home, and the lower proportion of young kids in the population.

The NMPF witness evaluated the average increase in differentials contained in Proposal 19, $1.49 or an 8.6 percent Class I price increase, to estimate the impact on demand. Assuming a 55 percent retail price transmission rate (1 percent change in the Class I price would cause a 0.55 percent change in the retail price), the witness estimated Proposal 19 would lead to a 1.6 percent decrease in demand. The witness concluded the decrease in demand would be lower than the increase in Class I revenue, resulting in a net increase of dairy farmer revenue.

Another researcher testified on behalf of IDFA. The witness presented the results of a study evaluating the impact milk price changes have on the consumption of milk (in five disaggregated varieties) and various alternatives, including soft drinks, bottled, water, juices, and for the first time considered plant-based alternatives. The witness utilized weekly scanner data from 2017 through August 2023 to evaluate three distinct time periods (pre-COVID, COVID and post-COVID). The witness estimated the data represented approximately 84 percent of the milk volume sold at retail outlets, or 64 percent of overall milk volume. The witness attributed the remaining 36 percent to milk sales through untracked retail, foodservice, schools, and shrinkage. The witness noted it is likely the elasticity for the unaccounted milk volume was highly inelastic.

The IDFA witness said the study found the own-price elasticities for traditional white, flavored, and lactose-free milk to be elastic, and when all five categories of milk were combined, it had an elasticity of -1.26 in the post-COVID time period. Utilizing some of the NMPF researcher's assumptions (8.6 percent increase in Class I prices and a retail price transmission rate of .55 percent), the witness estimated adoption of Proposal 19 would result in an overall 5.98 percent decrease in fluid milk sales and a 2.1 percent increase in gross dairy farmer revenue. The witness concluded this study revealed retail fluid milk sales are more sensitive to price changes than previously thought. The witness also noted other demand studies that utilize AMS estimated fluid milk sales, not weekly scanner data, do not reflect the current retail marketplace because they incorporate highly inelastic sales to schools, colleges and universities, long-term care and senior living facilities, hospitals, and correctional institutions.

A third academic researcher, also testifying on behalf of IDFA, provided results of a study evaluating the market effects of Proposal 19. Looking at milk production, fluid milk consumption, and producer price statistics since 2000, the witness concluded there are sufficient milk supplies nationally to meet Class I demands. The witness was also of the opinion sufficient milk supplies, at reasonable prices, exist for the high Class I utilization FMMOs (the Appalachian, Southeast, and Florida), because retail prices in the three markets were below those of a 30-city average retail milk price when compared to other regions of the country. The witness commented that elasticity studies not accounting for non-dairy alternatives are not representative of the current retail market. The witness reviewed recent fluid demand studies and concluded adoption of Proposal 19 would increase fluid milk prices, decrease consumption, and result in more milk use in manufactured products.

A post-hearing brief submitted on behalf of Select supported increasing Class I differentials, but not to the levels contained in Proposal 19. Select contended deviations from the USDSS results made by NMPF may be appropriate but disagreed with the type and extent of those included in Proposal 19. Select took exception to the proposed adjustments in the mideast and southwest regions where they have member farms. Select noted reasons for making deviations were not applied uniformly, especially in areas that have similar supply and demand environments. Select stated increased transportation costs and shifts in milk production and processing locations justify increasing Class I differentials and offered support for using the average of the May and October 2021 USDSS results, with minor adjustments and smoothing of the surface as the USDA would find appropriate.

A post-hearing brief submitted on behalf of MIG opposed adoption of Proposal 19, arguing hearing evidence supports lowering, not raising, Class I differentials. MIG cites the abundance of milk available to serve the Class I market and FMMO adjustments to shipping percentages as evidence to deny Proposal 19. MIG reiterated its objection to the methodology used and deviations made by NMPF in developing the proposed differentials. The brief contended raising Class I differentials would be disorderly because it would lower Class I demand and aggravate challenges already faced by fluid milk processors. MIG also noted Class I differential changes should not be considered until the impact of recent changes to transportation cost-related provisions in the Appalachian, Florida, and Southeast FMMOs were known.

A post-hearing brief submitted on behalf of IDFA opposed Proposal 19 on the grounds its adoption would cause market disorder by raising fluid milk prices, decreasing fluid milk consumption, harm consumers, and divert milk into manufacturing uses. IDFA reiterated hearing testimony in its

brief regarding the price elasticity of fluid milk and concluded adopting Proposal 19 would reduce fluid milk consumption by 5.98 percent, resulting in over 2.2 billion pounds of milk being diverted to manufacturing uses.

Similarly, IDFA objected to NMPF's methodology in determining the differential levels offered in Proposal 19. IDFA objected to NMPF's use of dairy farm production costs to justify increases to the Class I differentials and referenced existing milk production as more than adequate to meet fluid milk demand. IDFA maintained Class I differentials should instead be lowered by $0.40 per cwt because the Grade A maintenance cost consideration is obsolete and inaccurate.

A MIG witness testified in support of Proposal 20, seeking to reduce the base differential to $0.00. The witness' testimony centered around the continued relevance of the cost components currently provided for in the base differential: Grade A maintenance, balancing, and Class I incentive costs. The witness was of the opinion the base differential results in market enhancing prices that induce overproduction and reduce fluid milk consumption. The witness said that since almost all U.S. produced milk meets Grade A standards, it is no longer necessary to provide compensation through Class I differentials for those costs as they are not unique to producers supplying the Class I market. They argued these costs are already provided for in market-clearing Class III and IV prices where most of the U.S. milk supply is utilized.

The MIG witness said the balancing cost factor is no longer justified as fluid milk processors have either invested in infrastructure to balance their own milk supply or pay over-order premiums to their suppliers for balancing services. The witness was of the opinion incorporating balancing costs within the Class I price results in processors paying for balancing services they do not receive or paying twice for such services—once through the Class I price and again in an over-order premium. Lastly, the MIG witness argued the $0.60 Class I incentive cost factor is no longer necessary to attract adequate supplies of fluid milk given the low, and continually declining Class I utilization.

Witnesses from MIG member companies testified in support of Proposal 20. MIG's members echoed the previous MIG testimony on the relevance of the base differential cost factors in the current market environment. In particular, the MIG witnesses argued that through plant investments, particularly ESL processing or additional milk silos, combined with over-order premiums paid to their milk suppliers, they are directly paying for their individual milk balancing needs. The witnesses all opined that through the base differential they are being double charged for such services. All MIG members testified that if additional monies are needed for balancing services or to obtain adequate milk supplies, it is more appropriate for those costs to be negotiated in the marketplace and paid directly to their milk suppliers, rather than as part of a regulated minimum price shared with all pooled producers.

Another MIG witness testified regarding the relevancy of the base differential in the current marketplace. The witness was of the opinion the base differential should be reduced to $0.00, and if cost recovery is needed by producers, it can be negotiated with milk buyers. The witness utilized the USDSS model to compare the value of Class I and Class III milk at the county level. The witness presented the results and explained in some parts of the country, where Class III milk is more valuable, it would take additional incentives to service a Class I plant rather than remain at the higher valued manufacturing plant. In other areas of the country, namely the southeast, northeast, and California, the value of Class I is higher, representing the cost to balance the region's Class I demand. The witness said the national average value of the differences was negative $0.38, indicating nationally, it is more valuable for milk to service Class III plants. The witness drew the conclusion this analysis supports the argument for lowering the base differential to $0.00 and allowing fluid plants to negotiate and pay premiums directly to their milk suppliers.

A post-hearing brief submitted on behalf of MIG reiterated its witnesses' testimony that the base differential is no longer economically justified. MIG stated the current oversupply of Class I milk is caused, in part, from high FMMO blend prices. According to MIG, adoption of Proposal 20 would correct this disorder by allowing a greater proportion of fluid milk costs to be negotiated and paid directly to suppliers. The brief reviewed MIG witness testimony on the relevancy of the costs associated with the base differential and the steps taken by its fluid milk processor members to balance and obtain a milk supply.

A Lone Star witness, appearing on behalf of NMPF, testified in opposition to Proposal 20. The witness argued a base differential of $0.00 would result in the elimination of any Class I differential for large portions of the U.S., amounting to approximately $650 million annually, with no guarantee the money could be recovered through over-order premiums. Additionally, said the witness, the lower differentials would lead to disorderly marketing conditions through increased occurrences of negative PPDs, higher volumes of depooled milk, and reduced or eliminated incentives to supply the Class I market. The witness stressed that costs to maintain Grade A status and balance the market's milk supply are real and significant. The witness said adoption of Proposal 20 would be akin to adopting individual handler pools in much of the country, an idea which they said has been found to cause disorderly marketing conditions.

The NMPF witness maintained milk has an inelastic demand, so any reduction in Class I prices will not have a significant impact on Class I sales. The witness also said that despite opposition testimony regarding the perils of setting regulated prices too high, there are also negative consequences for setting the regulated price too low. In the witness's opinion, dairy farmers still face a market power imbalance when negotiating prices above FMMO minimums, reiterating previous testimony on the difficulty cooperatives have faced when negotiating and maintaining over-order premiums.

The NMPF witness concluded by emphasizing the objective of the FMMO system is to set prices to ensure a sufficient quantity of milk for fluid use. The witness stressed providing for prices that reflect the current costs of supplying the market as demonstrated through NMPF testimony should be a priority of this proceeding.

In their post-hearing brief, NMPF argued Proposal 20 incorrectly assumes the cost of servicing Class I demand has not increased and reiterated witness testimony on the continued relevancy and need for the base differential. NMPF stressed that costs recognized in the base differential continued to be incurred by dairy farmers in servicing the Class I market and took exception with the position such costs could be adequately recovered through over-order premiums. NMPF maintained Class I demand is inelastic and reiterated the need for Class I prices to continue to be the highest priced class in order to ensure an adequate supply.

The AFBF witness also expressed opposition to Proposal 20. The witness testified the cost factors provided for in the base differential are still relevant and in fact higher than when the differential was adopted. The witness

suggested the Department consider raising the base differential and provided current cost estimates for each of the three factors, which would result in a base differential increase of approximately $0.60 per cwt. The witness stressed the importance of the base differential in contributing to the proper alignment of classified prices which they considered a critical element of orderly marketing. The AFBF's post-hearing brief reiterated its witnesses' hearing testimony and concluded adoption of Proposal 20 would lead to disorderly marketing conditions.

A post-hearing brief filed by Lamers offered support for Proposal 20. Lamers stated its adoption would better reflect the real value of milk and all four classes would have a closer price relationship. Lamers asserted high Class I differentials are no longer needed to supply the fluid market given that 98 percent of milk produced is Grade A. A post-hearing brief submitted by New Dairy also offered support for Proposal 20.

Select's post-hearing brief expressed opposition to Proposal 20 and asserted a base differential of $1.60 should be maintained. Select opined the cost of maintaining Grade A status still exists and has increased, as have the costs associated with balancing and competing for a milk supply.

A post-hearing brief submitted by Edge, while not offering support or opposition to Proposals 19 or 20, did contend Class I milk prices should not be raised beyond necessary levels and not be raised merely to offset the negative producer impact of increasing make allowances.

The AFBF witness also testified in support of Proposal 21, seeking to increase the Class II differential from $0.70 to $1.56 per cwt. The witness explained the proposed differential reflects updated drying costs based on the current NFDM make allowance. The witness did not believe the proposed increase would lead to the substitution of Class IV powders in lieu of Class II fresh milk. The witness estimated that adoption of Proposal 21 would increase annual FMMO marketwide pool values by $122 million and reduce the likelihood of negative PPDs and depooling. These views were reiterated in AFBF's post-hearing brief.

Several witnesses representing MIG including Turner Dairy; HP Hood; AE; Shamrock; CROPP; Aurora; Shehadey; Crystal Creamery; and fairlife testified in opposition to Proposal 21. The MIG witnesses indicated adoption of Proposal 21 would result in Class II standalone plants choosing not to participate in the FMMO system, putting fully regulated Class I plants with Class II production at a competitive disadvantage. This sentiment was emphasized by witnesses from Turner Dairy and Shehadey, whose fully regulated Class I plants also produce notable volumes of Class II products. The witness from Crystal Creamery provided an analysis of CME NFDM and Class II nonfat solids prices, projecting an increase of 20 to 50 percent in the use of Class IV nonfat solids if Proposal 21 was adopted. Lastly, a witness from fairlife predicted adoption of Proposal 21 would cause some manufacturers to reformulate products in order to avoid paying the higher Class II price.

In its post-hearing brief, MIG reiterated hearing testimony and added that cream, a Class II product, must be made with fluid milk in accordance with the standards of identity established by the U.S. Food and Drug Administration. As such, according to MIG, a pooled Class II manufacturer of cream could not reformulate and, further, would experience an estimated 3.5 percent increase in its FMMO marketwide pool obligations.

Several witnesses representing IDFA, including Saputo, Galloway, and Lakeview Farms, also testified in opposition to Proposal 21. The witness for Saputo indicated the demand for Class II skim solids is likely to decrease if Proposal 21 is adopted, as alternative milk solids would have a greater substitution value. Further, according to the witness, costs to consumers for cream would likely increase.

The witness for Galloway testified that adoption of Proposal 21 would not increase blend prices or limit depooling and negative PPDs, as alleged, because Class II manufacturers would instead utilize more Class IV powder ingredients in lieu of fresh milk. In the witness' opinion, increasing the Class II differential would only serve to promote disorderly marketing through the displacement of the local milk supply and permanent investment of equipment to enable the use of Class IV ingredients. The witness said once a manufacturer makes the costly capital investment decision, they do not switch back to use fresh milk in the future. The witness estimated adoption of Proposal 21 would result in a $99.4 million loss to producers through the use of lower valued Class IV ingredients. A witness from Lakeview Farms supported the statements of other witnesses, emphasizing the likely increase in costs to the customer. This witness added that innovation of more oil-based formulations to offset the price volatility of dairy fat would lead to a disruption in the dairy supply chain.

In its post-hearing brief, IDFA reiterated testimony from the hearing which stressed that there is already an adequate supply of milk for Class I and Class II needs, and opined the current Class II price formula is working well as is. As such, according to IDFA, there is no evidence that suggests a need to increase the Class II differential. IDFA argued further that farmers are likely to receive lower net prices as a result of Proposal 21 due to the anticipated substitution of lower cost Class IV NFDM for Class II nonfat solids. Lastly, IDFA focused on the likely disproportionate impact of Proposal 21 on Class I handlers that also manufacture Class II products. Without the ability to depool, these handlers could not take advantage of lower NFDM prices, IDFA wrote.

An MMPA witness appearing on behalf of NMPF also testified in opposition to Proposal 21. The witness' testimony mirrored other witnesses cautioning that adoption could cause substitution with Class IV powder ingredients. The witness said not only does the Class II and Class IV price difference need to be considered, but so does the significantly lower transportation cost of powder versus fresh milk. Under the current Class II differential, Class II milk already has an incentive not to be pooled, said the witness. Increasing the differential would only heighten the incentive and create competitive disadvantages for Class I plants making Class II products, while simultaneously lowering marketwide pool values. In its post-hearing brief, NMPF added that adoption of Proposal 21 may incent the practice of substituting less expensive milk powder for fresh milk to make Class II products. NMPF also elaborated on its members' concerns regarding the likely increase in depooling of Class II milk if Proposal 21 was adopted.

USDA received post-hearing briefs related to Proposal 21 from three additional stakeholders: New Dairy; Select; and Lamers. New Dairy expressed its opposition to the AFBF's Proposal 21, emphasizing that the current milk supply is sufficient, and it shared the concerns of other hearing participants regarding the potential competitive disadvantages for Class I handlers manufacturing Class II products. Select explained that the AFBF's proposal deviates from the rationale and methodology USDA utilized to establish the Class II differential during Order Reform and, thus, according to Select, Proposal 21 likely overstates an appropriate Class II

differential. Further, Select was of the opinion increasing the Class II differential would discourage the use of fresh milk and cream in lieu of Class IV ingredients. Lastly, Lamers expressed its concern that the adoption of Proposal 21 would lead to disorderly marketing and stated no evidence was presented to suggest a need to increase the Class II differential.

Discussion and Findings

An FMMO (or ''order'') is a regulation issued by the Secretary of Agriculture (Secretary) that places certain requirements on the handling of milk in a defined geographic marketing area. FMMOs are authorized by the AMAA. The declared policy of the AMAA is to ''. . . establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce. . . .'' 7 U.S.C. 602(1). As specified by the AMAA, the principal means of meeting the objectives of the FMMO program are through classified milk pricing and the marketwide pooling of returns. This rulemaking concerns and is limited to classified milk pricing.

FMMOs announce prices each month for milk received by plants during that month, according to its use classification. Since 2000, the FMMO program has used product price formulas that rely on the wholesale price of bulk products to determine the minimum classified prices handlers pay for raw milk in the four classes of utilization. Class III and Class IV prices are announced on or before the 5th day of the following month to which they apply. The Class III and Class IV price formulas form the base, also known as the mover, from which Class I and Class II prices are determined.

The Class I price is announced in advance of the applicable month. It is determined by adding the Class I differential assigned to the plant's location, plus the average of advanced Class III and Class IV prices (computed by using the most recent two weeks' DPMRP data released on or before the 23rd of the preceding month), plus $0.74. The Class II skim milk price, announced at the same time as the Class I price, is determined by adding $0.70 per cwt to the advanced Class IV skim milk price. Thus, the advanced prices pertaining to milk marketed in a particular month use the same formulae as the calculation of Class III and IV prices for milk marketed in that same month, but the specific data are from different time periods. The Class II butterfat price is announced at the end of the month, at the same time as the Class III and Class IV prices, by adding $0.007 per pound to the Class IV butterfat price.

Component prices are based on prices for the selected bulk products collected through the AMS-administered DPMRP, which collects weekly wholesale prices for four manufactured dairy products in various bulk package sizes (cheese, butter, NFDM, and dry whey powder). Weekly average prices for cheddar cheese (the weighted average of block and barrel prices), butter, NFDM, and dry whey are reported in the NDPSR.[1] Butterfat prices for milk used in products in each of the four classes is determined through surveyed butter prices. Protein and other solids prices for milk used in Class III products are derived from surveyed cheese and dry whey prices, respectively. The nonfat solids price for milk used in Class II and Class IV products is calculated from surveyed NFDM product prices.

The butterfat, protein, other solids, and nonfat solids prices are derived through the weighted average monthly NDPSR survey prices of each corresponding commodity, minus a manufacturing (make) allowance, multiplied by a yield factor. The make allowance factor represents the fixed and variable processing costs manufacturers incur in making raw milk into one pound of product. The yield factor represents the approximate quantity of product that can be made from a cwt of milk received at the plant, assuming a certain component composition of the milk and the final products. Among other factors used to determine yield, the milk received at a plant is adjusted to reflect farm-to-plant shrinkage compared to farm weights. This relates to the basic question of how much milk is required to make a pound of product.

This product pricing system was implemented as a part of Order Reform on January 1, 2000. 64 FR 70868 (Dec. 17, 1999). While individual pieces of the price formulas have been updated occasionally since that time, this proceeding is the first time since their adoption that the Department is considering a comprehensive update to all four classified price formulas 68 FR 7063 (Feb. 12, 2003); 71 FR 78333 (Dec. 29, 2006); 78 FR 24334 (Apr. 25, 2013).

The objective of this proceeding is to evaluate whether market or other economic conditions have changed and if the price formulas need to be updated to reflect current conditions, including economic and technological factors related to processing, transportation, and other relevant market functions or services. Twenty-one proposals, divided into five main topic areas, were considered: milk composition factors—two proposals; surveyed commodity products—four proposals; Class III and Class IV formula factors—six proposals; base Class I skim milk price (often referred to as the ''higher of'')—six proposals; and Class I and Class II differentials—three proposals.

The record supports the findings that some price formula factors should be amended to reflect current market conditions that were evidenced in this proceeding. The recommended changes, which are discussed in detail below, include:

1. *Milk Composition Factors:* Update the factors to 3.3 percent true protein, 6 percent other solids, and 9.3 percent nonfat solids.

2. *Surveyed Commodity Products:* Remove 500-pound barrel cheddar cheese prices from the DPMRP survey and rely solely on the 40-pound block cheddar cheese price to determine the monthly average cheese price used in the formulas.

3. *Class III and Class IV Formula Factors:*

a. Update the manufacturing allowances as follows:

i. *Cheese:* $0.2504;

ii. *Butter:* $0.2257;

iii. *NFDM:* $0.2268; and

iv. *Dry Whey:* $0.2653.

b. Update the butterfat recovery factor to 91 percent.

4. *Base Class I Skim Milk Price:* updating the formula as follows:

a. *Class I milk used in ESL products:* The average of the advanced Class III and Class IV skim milk prices, plus a rolling monthly adjuster. The rolling monthly adjuster would be equal to the average of the difference between the higher-of and the average-of, for 24 months, with a 12-month implementation lag period.

b. *Milk used in all other Class I products:* the higher-of the advanced Class III or Class IV skim milk prices for the month.

5. *Class I and Class II differentials:* Update the Class I differentials to generally reflect the United States Dairy Sector Simulator May results contained in evidence.

Milk Composition Factors

Milk composition factors contained in the product price formulas represent assumed component levels of skim milk on a cwt basis. These factors were adopted on January 1, 2000. Currently, the formulas assume 3.1 pounds of true

[1] Official Notice is taken of the Notice of Equivalent Price Series: 77 FR 22282 (April 18, 2012). The National Dairy Product Sales Report was deemed as equivalent to the price series previously released by the National Agricultural Statistics Service.

protein, 5.9 pounds of other solids, and 9 pounds of nonfat solids in 100 pounds of skim milk.

The level of assumed components in milk ultimately impacts minimum regulated prices paid by handlers, although the impact varies since there are variations in how components are used to value milk between FMMOs. All handlers regulated by the Arizona, Southeast, Florida, and Appalachian FMMOs pay for milk used in all four classes on a volume (cwt) basis, regardless of the components contained in the skim milk (referred to as skim/fat pricing). Simply put, handlers pay for the pounds of skim and pounds of butterfat in milk they purchase from dairy farmers. In the remaining seven FMMOs, handlers pay for manufacturing milk based on the actual pounds of components in milk they purchase (referred to as multiple component pricing). Milk used in fluid milk products (Class I) is paid based on the skim and butterfat pounds delivered, regardless of the components contained in the milk. Changing the milk component factors primarily impacts Class I minimum prices paid by fluid milk processors in all 11 FMMOs, and to a lesser extent manufacturing handlers purchasing milk for Class II, III, and IV uses on skim/fat FMMOs.

Proponents of changing the milk component factors argue actual average milk component levels in farm milk have increased since January 1, 2000, and milk should be priced to buyers to reflect the value of those components. NMPF proposes (Proposal 1) component levels at observed 2022 levels (3.39 true protein, 6.02 other solids, and 9.41 pounds of nonfat solids). NMPF also proposes an updated methodology whereby components could be updated once every three years, without a rulemaking proceeding, if the nonfat solids levels in FMMO producer skim milk changed by 0.07 percentage points or more from the level stated in regulation. In its proposal, NAJ seeks an automatic annual update, with no change threshold to be met (Proposal 2).

Both NMPF and NAJ argue that because component levels in producer milk have risen but are still accounted for in the price formulas at 2000 levels, the difference between Class I prices and manufacturing milk prices (Class III and IV) has narrowed. Put another way, milk used in manufacturing in the multiple component FMMOs is paid based on actual component levels, so producers are paid for all component pounds delivered to manufacturing plants (approximately 85 percent of FMMO manufacturing milk is pooled on the 7 multiple component orders). Consequently, payments for milk delivered to manufacturing plants increase as component levels delivered to those plants increase. However, milk delivered to Class I plants is paid on a fat/skim basis whose formulas contain the assumed component levels at issue in this proceeding. Thus, as milk component levels have risen, Class I plants have continued to pay for milk based on the static component levels contained in the formulas. Proponents argue the result has been a narrowing between fluid and manufacturing prices causing marketing challenges, especially in the milk deficit markets in the southeastern region that must compete to procure a supplemental Class I milk supply with manufacturing milk demands in multiple component orders. Proponents also stressed the narrowing of the difference between Class I and manufacturing milk prices increases the occurrence of price inversions and depooling.

The record of this proceeding reveals FMMO component levels in raw milk have increased since January 1, 2000, most notably since the mid-2010s. Milk component data is not available before 2000 because the prior methodology for pricing milk did not require milk composition-level assumptions. The Order Reform decision did not address specifically why these assumptions were adopted. However, since component levels observed in FMMO skim milk in 2000 were 3.1 percent true protein, 5.9 percent other solids, and 9.0 percent nonfat solids, it is reasonable to assume they were set at those levels because at the time they were representative of all pooled milk in the FMMO system. Evidence reveals that from 2000, component levels were relatively flat with only a slight increase through the mid-2010s. Beginning in 2016, observed data show a marked increase in component levels. The data also clearly show component levels throughout the country vary by season, with levels lower in the spring and summer, and higher in the fall and winter. Hearing testimony revealed numerous reasons for the recently observed milk component increases, including genomics in dairy cattle selection and breeding, higher cull rates of less productive cattle, and improvements in cattle nutrition and animal husbandry.

Opponents of increasing component levels, primarily fluid milk handlers, argued three general reasons an increase is not justified. First, fluid milk handlers, who would be primarily impacted by these proposals, do not receive producer milk at the proposed component levels. They contend higher component milk is delivered to manufacturing plants, leaving the lower component milk for fluid milk handlers. Second, fluid milk handlers testified they receive no additional market revenue for higher components in milk because their sales are on a volume basis (*i.e.,* gallons) not on the skim component levels in their fluid milk products. Therefore, they argued, they should not be charged for additional skim components that have no additional market value in their products. Third, opponents argued updating component levels also would unduly harm manufacturing handlers in the skim/fat orders who pay for milk based on a skim/fat basis, as explained earlier. They argue the proposed component levels are higher than those delivered to plants, both fluid and manufacturing, in the four skim/fat orders. An evaluation of the record evidence for each of these claims follows.

First, opponents of increasing component levels argued fluid milk handlers do not receive milk containing the levels of components proposed. Testimony from fluid milk handlers during the hearing was mixed. Some fluid milk handlers would not reveal component levels for the Department to consider, citing confidentiality concerns. Other fluid handlers, who did offer data, showed a range of average component levels in skim milk received: true protein ranged from 3.03 to 3.63 and other solids ranged from 5.83 to 6.10. Many producers who testified also discussed the rise in their farm component levels because of the decisions and investments made at the farm. While some producers could cite data, for example true protein tests ranged from 3.12 to 3.83, many who could not cite specifics did discuss a general increase in their component levels.

Second, opponents argued that because component levels have no bearing on the volume of milk sold, they should not be required to pay higher Class I prices for higher components that provide no additional market revenue. The record clearly shows fluid milk handlers sell fluid milk products based on volume, which is why prices are based on skim and butterfat pounds purchased. Proponents of changing the composition levels provided anecdotal evidence, such as marketing claims and product description, to assert fluid milk products can garner additional market revenue for higher component levels. However, no data were provided to prove there is a general industry-accepted norm or practice that allows handlers to recover a value for nonfat

milk solids in excess of the nutrition label claim.

Finally, opponents claimed that increasing component levels in minimum price calculations would unduly harm manufacturing handlers in the skim/fat orders. The record contains actual component tests of producer milk in the multiple component pricing orders because producers in those orders are paid based on the pounds of components sold. However, component data for the four skim/fat orders could only be estimated as producers in those orders are paid based on the volume of skim milk and butterfat produced, not component levels. Record evidence contains USDA estimated data showing component levels in milk have consistently been above the current assumptions in all four fat/skim orders. Estimated protein and other solids levels of skim milk pooled in the three southeastern orders have been above the assumed levels in most months since January 2018, and below the levels contained in Proposal 1 in all months. Estimated protein and other solids levels of skim milk pooled in the Arizona Order have been above the assumed levels in all months since January 2018, and above the levels contained in Proposal 1 some months. Dairy Herd Improvement Association component data offered at the hearing, although by no means all encompassing, is consistent with estimated data provided by USDA. In the four skim/fat orders, average protein levels from 2020–2022 were above the current formula assumptions but below those contained in Proposal 1.

This decision considers how the price formulas should be updated to reflect current market conditions. Milk composition levels are only one piece of the formulas being addressed. However, as with all the factors adopted at the time of Order Reform and updated through subsequent rulemakings, the question before the Department is what level is representative of current supply and demand conditions as required by the AMAA. Some parties argued milk composition factors should not be changed because not all milk would meet the levels proposed by NMPF. Price formulas in the FMMO system have never had factors that assumed all milk was identical. Since FMMOs utilize a national pricing system, price formulas have always relied on averages to set levels representative of market conditions. The nature of an average means some milk will fall above or below the specified level. This was true with the milk composition levels that were adopted in 2000, and similar to other factors, such as make allowances, survey commodity prices, and butterfat recovery percentages.

With sufficient data showing increasing milk composition levels, the record supports updating the formulas to reflect current market conditions. The question becomes what levels best represent the entire U.S. market. The review of record evidence described earlier reveals many factors should be considered: the average component levels of pooled producer milk, the variability in milk components regionally and seasonally, the discrepancy in milk component levels received by fluid milk handlers compared to manufacturing handlers, and the variability of component levels from farm to farm. These factors were not specifically mentioned as being considered in the Order Reform decision when the current levels were set. However, given the evolution of the dairy industry in the past 24 years, they are relevant for consideration in this proceeding.

Fluid milk handlers argued the component levels should not be increased because Class I plants do not receive component levels as high as proposed. While the record does not contain a comprehensive data set of milk component levels received at fluid milk plants, it does contain data on milk component levels of all milk pooled on the FMMOs, as well as evidence submitted by producers on the component levels in their milk, and information from fluid milk handlers on the component levels they receive. Importantly, many fluid plant operators testified the milk components received at their respective plants are higher than currently assumed in the formulas, but less than what has been proposed.

While this decision finds milk composition levels should be increased, the levels in Proposal 1 are not appropriate, assumed component levels applicable to the raw milk whose price is impacted by these assumptions. Given the variability and seasonality of component level information contained in the record, this decision finds an average of component levels in skim milk over a recent time period appropriate. Based on evidence that component levels have been increasing at a more rapid rate since the mid-2010s, this decision finds the average component levels from 2016–2022 the most appropriate time period to represent producer milk currently priced on a skim/fat basis. Accordingly, this decision recommends the following: 3.3 percent true protein, 6.0 percent other solids, and 9.3 percent nonfat solids. Estimated data for the three southeastern orders show component levels exceeding these proposed levels in recent months, thus addressing opponents' claims that manufacturing handlers in the southeastern orders receive lower component milk than other FMMOs. The recommendation balances the cumulative body of evidence and testimony presented at the hearing.

During the hearing and in their post-hearing brief, Edge proposed, in addition to updating skim component levels, that the assumed butterfat level of 3.5 percent should also be updated to facilitate risk management. Updating butterfat levels is outside the scope of this proceeding as no proposal contained in the hearing notice offered such a change. As risk management programs utilizing FMMO prices are maintained in the private sector, such programs can adapt as necessary to facilitate the use of updated price formulas.

NMPF and NAJ also proposed alternative updating and implementation schedules for the milk composition levels. NMPF proposed the composition levels be updated once every three years, but only if there was a 0.07 percent or greater change in nonfat solids levels, compared to what was in regulation. For example, if Proposal 1 was adopted, milk composition factors could only be updated three years later if the average nonfat solids levels in pooled FMMO milk was 9.48 percent (9.41×1.007). NAJ proposed the levels be updated annually, regardless of the magnitude of increase. Both proponents requested a 12-month implementation lag because of the implications such a change could have on producer risk management positions. Edge proposed a longer implementation lag of 15½ months because of risk management positions tied to the DRP.

The development and use of dairy risk management tools is relatively new, and the Department has never before been asked to delay implementation of FMMO changes in consideration of risk management. However, testimony made clear producers' concern regarding the negative financial impact that could occur if regulatory changes did not account for the growing use of risk management tools.

Producers testified to the use of numerous market-based risk management tools, including the CME futures and options, and the two USDA-Risk Management Agency approved insurance products, DRP and Livestock Gross Margin—Dairy (LGM-Dairy). Use of risk management tools by producers testifying at the hearing varied sharply, with some not using any tools, some

only enrolling in the DMC program, and fewer using DRP insurance or the CME hedging tools. The record reflects 32 percent of U.S. milk production was covered in 2022 under DRP, and with a much smaller use of LGM-Dairy. Producers testifying were particularly concerned with the implementation schedule for the initial change, as risk management positions could be as far out as 18 to 24 months. Evidence shows that from 2018 through 2022, almost all CME contracts, 97.34 percent, expired within 12 months. According to producers, any change to the milk composition level assumptions during the contract period could result in basis risk to producers not covered by the hedge. A CME witness testified they saw a 54 percent drop in contracts with expiration dates over 360 days in 2022 as compared to 2018, which the CME attributed to the industry already anticipating a regulatory change based on the outcome of this hearing.

Record evidence depicted the concern regulatory changes could have on risk management tools, particularly the impact on the usability of these tools during a transition period. Risk management usage must be considered against the interest of other producers who do not use risk management tools, since it would delay recognition of the higher components in producer milk. While risk management use is not a factor in determining what the milk component levels should be, it is appropriate when determining an implementation timeframe to attempt to mitigate potential financial harm to producers who utilize risk management tools. Accordingly, this decision finds a 12-month implementation lag appropriate, beginning when other changes from this proceeding become effective. This delayed implementation should cover hedge positions for the vast majority of producers utilizing these tools. In addition, as this recommended decision indicates the Department's initial position, producers making risk management decisions are aware of the potential changes, should they be approved by producers.

Lastly, this decision does not support an automatic update of the milk composition levels, as contained in Proposal 1 or Proposal 2. It is clear from the record that many factors, as described earlier, should be considered when making a change. Those factors can only be considered through the course of a rulemaking.

Surveyed Commodity Products

USDA administers the DPMRP to gather weekly wholesale prices of four manufactured dairy products. Average survey prices are released weekly in the NDPSR, and monthly average commodity prices are released by AMS on or before the 5th of the following month. The monthly product prices are then used in the FMMO price formulas to determine component values in raw milk. The same four commodities have been surveyed since 2000. NASS administered the survey from 2000 to 2012; submitting data was voluntary until 2008, and then mandatory and verified from 2008 to 2012. AMS has administered the survey since 2012 with the data being mandatory and audited 73 FR 34175 (June 17, 2008).

This proceeding is considering four proposals that would add or remove a variety of products in the DPMRP survey. Because FMMOs enforce minimum raw milk pricing, the overarching question for the Department in this decision is whether the current surveyed commodities are an appropriate representation of market clearing, wholesale commodity products whose prices provide an accurate reflection of the minimum value of raw milk. DPMRP currently surveys cheddar cheese, butter, nonfat dry milk, and dry whey. Proposals submitted in this proceeding offer changes to the cheese survey (Proposals 3, 4, and 6) and changes to the butter survey (Proposal 5). No proposals seek changes to the NFDM or dry whey surveys.

Cheese Survey

Currently, FMMOs utilize a weighted average DPMRP survey price of 40-lb cheddar cheese blocks and 500-lb cheddar cheese barrels to determine the protein price used in the Class III price formula. Although both products meet the definition of cheddar cheese, the different package styles reflect that their intended uses are different. Cheddar cheese barrels are intended to be further processed into processed cheeses. Cheddar cheese blocks can also be used for that purpose, but they are produced with the intention of use in a natural cheese with minimal further processing (for example cutting into consumer packages or shredding.) DPMRP weights the cheese price by the volume of surveyed blocks and barrels, which according to record evidence, is typically around 50 percent blocks and 50 percent barrels.

Proposal 3 seeks to drop barrels from the survey and solely rely on a survey of 40-lb blocks. Proponents offered a few reasons for dropping barrels. First, they believe barrels are overrepresented in the survey because the weighting methodology is based on the production percentages included in the survey and not actual production across the entire cheddar cheese market. Proponents believe the percentage of cheddar cheese manufactured and priced off 40-pound block prices is significantly higher than 50 percent of the U.S. natural cheese market. Second, proponents argue that having what amounts to two products in the survey results in an average price that is not representative of either blocks or barrels. They say this has been particularly evident since 2017, when market prices between blocks and barrels began to significantly diverge, both in magnitude and direction, from the historical average difference of $0.03. Barrel prices were even occasionally higher than blocks (historically, block prices have been higher than barrel prices). Proponents argued that when barrel prices have been well below the assumed $0.03 difference, the current weighting methodology results in a lower average cheddar price than would have been if the two prices were weighted in accordance with actual, total production of each product. Members of NMPF testified a block-only survey would contain adequate survey volume to be representative of the cheese market.

Opponents of dropping barrels asserted: (1) it is not appropriate to eliminate approximately half of the current cheese survey volume; (2) barrels are a market-clearing product and should continue to be included in the survey; and (3) blocks and barrels together represent the national cheese market as they are both commodity products with different commercial uses. Opponents also disputed the claim that most cheese is priced off the block market.

During the hearing, Edge offered an alternative that would reweight the survey average price based on the U.S. production volume of blocks and barrels as determined by NASS, instead of volume from respondents to the AMS survey. They opined barrels should not be removed from the survey because in months where the barrel price exceeded blocks, the Class III price would have been lower than it otherwise was, and consequently producer revenue would be less. Instead, Edge argued a better solution to the issue of overweighting barrels was to use a weighting methodology reflective of actual U.S. cheddar cheese production.

Proposal 4, submitted by AFBF, seeks to add 640-lb blocks of cheddar cheese to the survey. This type of cheddar cheese is made using the same process as 40-lb blocks and differs only in the final container for the cheese curd. Both sizes represent an intermediate product requiring further processing before it

can be consumed. The proponent's primary justification is the additional survey volume that would be added. The AFBF agreed with NMPF that barrels are overrepresented in the survey, and their proposed solution is to add survey volume through the addition of 640-lb blocks. This argument implicitly assumes the accuracy of milk valuation is improved when a larger volume of cheese is surveyed.

Opponents to adding 640-lb blocks argued: (1) most 640-lb blocks are already priced off 40-lb blocks, so their inclusion would not enhance price discovery; and (2) 640-lb blocks are typically customer-specific which would exclude those blocks from the survey. The opposition is premised on the additional survey volume not adding new price information either because the prices are already reflected in the 40-pound block price, or because the customized products are value-added and should not be included for minimum pricing.

Proposal 6, offered by CDC, seeks to add mozzarella cheese to the survey. Proponents argue mozzarella is the largest volume of cheese produced in the U.S., and revenue from mozzarella products should be captured in the survey and ultimately reflected in prices paid by Class III handlers. Further, proponents argued a higher Class III price should be reflected in producer prices to offset increasing farm production costs.

Opponents argued there is no one standard of identity for mozzarella cheese, making it difficult to delineate what mozzarella product would have a substantial volume of reportable sales to represent the market value of mozzarella cheese. In addition, opponents stated no manufacturing cost data is available to be evaluated for inclusion in the manufacturing allowance calculation for cheese. Lastly, opponents asserted mozzarella is not a market-clearing product and therefore should not be considered when determining minimum prices.

While there were three proposals offering changes to the cheese survey, two of them lack data and evidence to support adoption. First, the addition of mozzarella is not supported by the record. The record reveals multiple standards for different mozzarella cheese products, but no evidence was presented to show which of those would be appropriate to survey as an improvement in finding a minimum value for milk. Furthermore, no evidence was presented on what would define a commodity mozzarella product, rather than a value-added product, which is a general rule for inclusion in the DPMRP. Proponents offered information on mozzarella in consumer sized packages (*e.g.,* mozzarella sticks), but little to no evidence on what should be considered a commodity mozzarella product. Evidence shows that a majority of what is considered mozzarella production is driven by customer specification and would not meet any of the standards of identities offered, indicating it would be considered a value-added product and excluded from the survey. Lastly, the record indicates mozzarella products are already typically priced based on the 40-pound cheddar cheese block price. Therefore, adoption of Proposal 6 would only result in significant costs associated with determining a commodity mozzarella product to be surveyed and the ongoing cost of surveying said product, without adding measurable new price information to the DPMRP cheese survey. Accordingly, Proposal 6 is denied.

The record lacks evidence to support adoption of Proposal 4, adding 640-lb blocks. The record reflects widespread industry consensus that 640-lb blocks are typically priced off 40-lb blocks. Because of this price relationship, numerous industry witnesses testified that no new price information would be captured by including 640-lb blocks. In addition, several witnesses testified 640-lb blocks are largely made-to-order on long-term price contracts which would exclude the sales from the survey because of these marketing characteristics. No data was presented to evaluate whether any additional price information gained through inclusion of 640-lb blocks would offset the burden (lack of efficiency) to both the industry and USDA for their inclusion. Accordingly, Proposal 4 is denied.

The Department considered the idea presented by Edge to reweight blocks and barrels in the survey to reflect total U.S. cheddar cheese production volumes by packaging type, instead of survey volumes. However, the record lacks evidence regarding the market dynamics of barrel production to analyze how this idea would be implemented, or the impact it may have on prices, to evaluate whether it would result in a more appropriate cheese price. In addition, as is made clear below, this decision finds that surveying two cheese products is no longer an appropriate method for providing orderly marketing in today's marketplace, rendering further discussion of a more proper weighting methodology unnecessary.

What is left to consider is whether 500-lb barrels should remain in the survey. When determining which products are appropriate to be included in surveys, the Order Reform Final Decision is instructive. As described in the decision, ''The importance of using minimum prices that are market-clearing for milk used to make cheese and butter/nonfat dry milk cannot be overstated. The prices for milk used in these products must reflect supply and demand and must not exceed a level that would require handlers to pay more for milk than needed to clear the market and make a profit.'' 64 FR 16026, 16094 (April 2, 1999). To effectuate that objective, FMMOs use survey prices of market-clearing commodity products.

In the Order Reform decision, both block and barrel cheese were included in the survey to increase the sample size and give a better representation of the cheese market. Since Order Reform was implemented, an evaluation of which products should be included in the cheese survey has occurred twice. In 2000, shortly after implementation of Order Reform, the Department considered both the addition and subtraction of cheese products into the survey, which at that time was administered by the NASS. 65 FR 20094 (April 14, 2000) In 2007, the Department again considered changing the products in the cheese survey, including the removal of 500-lb cheddar cheese barrels. 72 FR 6179 (Feb. 9, 2007) In both proceedings, the Department maintained that inclusion of both 40-lb blocks and 500-lb barrels was representative of the cheese market at the time.

While not contained in the hearing notice of the 2000 proceeding, there was testimony at the hearing for incorporation of other cheeses in addition to cheddar. The idea was denied because ''If the survey included other descriptions of cheddar and other types of cheese, such as mozzarella, it would not be possible to consider the reported price as representative of the value of any particular product.'' 67 FR 67906, 67926 (Nov. 7, 2002) This reasoning illustrates an important consideration of which products should be contained in the survey; products whose resulting prices are representative of a distinct product.

For all other product pricing formulas (butter, nonfat dry milk, and dry whey), DPMRP only surveys one product. The butter survey collects prices of 80 percent salted Grade AA butter, the NFDM survey collects prices of USDA Extra Grade NFDM, and the dry whey survey collects prices for USDA Extra Grade dry whey. While all three of these products can be in varying bulk packaging sizes as specified in regulation, the product itself is

essentially the same. 7 CFR 1170.8 Consequently, the resulting survey prices represent single, distinct products.

The same cannot be said of the two cheddar cheese products surveyed. Forty-pound block cheddar cheese is typically colored, and primarily sent for further processing into consumer type packages such as ''cut and wrap'' and shredded products. Barrel cheese, on the other hand, is typically white (uncolored) and used primarily for processed cheese and cheese-flavored products. The hearing record demonstrates the two products are not interchangeable but rather are produced for two distinctly different uses which have their own supply and demand factors. These fundamental qualities have not significantly changed since Order Reform. At the time of Order Reform, and during the subsequent two rulemakings considering changes to the cheese survey, the prices of blocks and barrels were relatively close, and it was determined the additional volume added with the inclusion of barrels was a benefit to orderly marketing as it ensured a robust survey sample.

Testimony and evidence presented showed the historical price alignment of the two products, estimated at $0.03 per pound, until 2017. Proponents argued the market changed significantly in 2017 when there was a dramatic increase in price volatility both within each product and in the relationship between the two products. To determine statistical validity of that claim, the differences in the monthly average block and barrel prices from 2001–2023 were analyzed to identify breaks in the structure of the block-barrel spread. The analysis found December 2016 to be a statistically significant month, indicating the period between 2001 to 2016 and 2017 to 2023 were statistically different in terms of the block-barrel spread volatility. Historically, prices for blocks and barrels were similarly priced. From 2001–2016, the block-barrel spread averaged $0.01 per pound, while from 2017–2023 the spread significantly increased to $0.115 per pound.

When surveying prices of two products that recently are so divergent, the resulting average cheese price does not represent either of the products surveyed. For example, in October 2020, cheddar block prices averaged $2.5692 per pound and cheddar barrel prices averaged $0.6052 per pound lower at $1.9640 per pound. The weighted average cheese price for October used to compute FMMO component prices was $2.2921, a price reflecting neither of the two survey products. Accordingly, after careful analysis of the record, this decision finds the DPMRP cheese survey should only include 40-lb cheddar cheese blocks. Evidence reveals a clear and statistically significant shift in the cheddar markets occurred in 2017, which witness testimony attributed to a number of market factors including plant investments and increased production of white whey. As a result, inclusion of both blocks and barrels in the cheese survey has resulted in average cheese prices used in FMMO formulas that are not representative of any one cheese product. Therefore, this decision recommends adoption of Proposal 3.

There was significant testimony regarding how cheddar barrel makers would be impacted if 500-lb barrels were no longer surveyed. It was clear there was no industry consensus, not even between barrel makers, on the impact. What is paramount to any rulemaking is to ensure FMMO provisions provide for orderly marketing conditions, as required by the AMAA. The ultimate consideration is which set of bulk, market-clearing, commodity type dairy products provide the most accurate and efficient means of determining the minimum value of milk components. One facet of this is to ensure prices used in the formula best represent the fundamental products selected for their purpose. As described above, that goal is not being met by using both blocks and barrels in the survey.

One concern expressed by some barrel cheese manufacturers is that the Class III price resulting from a block-only calculation would often be too high to ensure a profitable return to barrel cheese makers. Multiple considerations are worth noting. One, there are numerous styles of cheese represented in Class III. Manufacturers of each have no guarantees on their net returns, and, hence, manage their business by taking minimum pricing into account. To that end, there are many steps remaining in this rulemaking process, including publication of a final decision, producer referendum, and if passed, an implementation period. These steps should allow barrel manufacturers ample time to determine if changes are needed in their business practices to adjust to the prices that would result from this recommended price survey. As FMMOs only enforce minimum regulated prices on pooled milk, it should not be overlooked that barrel manufacturers choose whether to pool milk subject to minimum prices.

Butter Survey

Currently, FMMOs utilize the monthly average DPMRP survey price of 80 percent salted Grade AA butter in 25-kilogram and 68-pound boxes to determine the butterfat price used in all 4 classified pricing formulas. Proposal 5 seeks to add unsalted butter to the survey. Proponents argue the volume of U.S. butter production captured by the survey has been decreasing, and adding unsalted butter would increase the sample size and yield more robust survey results.

Testimony in opposition to Proposal 5 asserted the production of unsalted butter is mostly manufactured to a particular customer order. Because the lack of salt results in a shorter shelf life, unsalted butter is generally not manufactured unless its sale is imminent. On the other hand, because salted butter can be stored, when milk needs to clear the market and butter manufacturers lack a buyer, they will make salted butter to store and sell later. Opponents also noted unsalted butter is typically exported, often facilitated through premium-assisted sales, rendering those sales unreportable.

The record lacks evidence to support adoption of Proposal 5. Although data was entered showing the amount of unsalted butter graded by the USDA Dairy Grading Program tripled between 2005 and 2022, the USDA butter grading program is voluntary; hence, the data does not give a complete picture of the U.S. butter market. Furthermore, there was no indication regarding what percentage of the graded butter volume would be reportable given testimony noting the structure of the unsalted butter market would likely make a large share of it nonreportable. No data was presented to evaluate whether any additional price information gained through inclusion of unsalted butter would outweigh the burden to both the industry and USDA for its inclusion. In fact, the record demonstrates that unsalted butter is not a market clearing product given its shorter shelf-life and on-demand production.

The record evidence supports salted butter as the market clearing butter product and continuation as the only butter product in the survey. In addition, as discussed in evaluating the cheese survey, having two commodity products surveyed (such as blocks and barrels) can have the unintended consequence of resulting in a component price that does not represent either product produced. As no price information was entered into evidence to evaluate how salted and unsalted butter prices compare, the Department

could not determine if a similar situation might occur by adding unsalted butter to the survey. Accordingly, Proposal 5 is denied.

Class III and Class IV Formula Factors

The Class III and IV formula factors include four distinct elements—manufacturing (make) allowance, butterfat recovery, farm-to-plant shrinkage, and nonfat solids yield.

a. Make Allowances

Make allowances represent the costs of converting raw milk into the four manufactured dairy products surveyed by USDA. The current make allowance levels were determined through a 2007 rulemaking that became effective October 1, 2008, and are as follows ($/per pound): cheese—0.2003; butter—0.1715; NFDM—0.1678; and dry whey—0.1991. The 2007 rulemaking used an average of two surveys: a voluntary, unaudited 2006 nationwide cost survey conducted by the Cornell Program on Dairy Markets and Policy (CPDMP), and a mandatory, audited 2006 cost survey of plants located in California conducted by the CDFA. This proceeding must determine whether manufacturing costs have increased such that a change from the current levels is warranted, and if so, what are appropriate levels.

Four manufacturing cost data sets were entered into the record for consideration in this proceeding. The first was conducted by the University of Wisconsin, on behalf of USDA, and was a voluntary survey of manufacturing plants throughout the U.S. (2021 survey). This survey was similar to the 2006 CPDMP survey used to determine current make allowances, as the primary researcher authored both. The 2021 survey collected cost information provided from manufacturing plants of cheese (10 plants), butter (12 plants), NFDM (27 plants) and dry whey (8 plants). Annual data submitted by plants primarily represented calendar year 2019, and included labor, utilities, non-labor processing, packaging, general and administrative, and return on investment cost categories. The 2021 survey results were presented as total averages, and high and low-cost plant averages.

The 2021 survey methodology was similar to the 2006 study, except for the allocation of non-allocated costs. Some fixed or overhead costs could not be allocated directly. Some costs were inherently direct costs but were not collected in a manner that allowed them to be assigned to a particular processing activity or product. When that occurred in previous studies, unallocated costs were allocated on a solids basis, which testimony revealed to be a common practice, according to some manufacturers. In some facilities making multiple products, such as butter and powder plants, not all plant operators had the infrastructure to allocate costs to the different products. A common example was plant utilities wherein the plant only had a single electric meter. If an operator utilized 70 percent of the solids received at the plant in butter, then 70 percent of the unallocated costs (*e.g.,* electricity) were allocated to butter production, and the remaining 30 percent were allocated to NFDM production. This allocation method was referred to by the study author as the ''non-transformation'' method.

In the 2021 survey, the author used what they believed to be a better method for addressing costs the manufacturer could not directly allocate. Unallocated costs were allocated based on an estimation of the degree of processing transformation the raw milk underwent to transform into a manufactured product. On a scale from 1 to 10, products with minimum processing (liquid whey) were assigned a 1, while products with a high degree of transformation (whey protein concentrate) were assigned a 10. The survey author argued this somewhat subjective and ordinal measure of costs could provide a more logical allocation of certain costs that were inarguably not properly attributed through the non-transformation cost allocation method. The most obvious example was the highly energy consuming process of drying for NFDM powders. For example, operating a milk dryer requires significant energy, resulting in an assumption that it was more appropriate for a higher percentage of the plant's energy costs to be attributed to its powder production.

A second data set was a survey conducted by the same author, administered on behalf of IDFA, seeking to capture more current costs and increase the number of respondents. This survey, referred to as the 2023 survey, was similar to the 2021 survey except for two elements. First, the plants that voluntarily submitted data were different in number and type: 18 cheese, 13 butter, 15 NFDM, and 9 dry whey plants participated. The survey author explained that while the number of participating plants were similar for butter and whey across both surveys, the structure of the plants was noticeably different. Consequently, most of the variability in average costs between the 2021 and 2023 surveys is attributed to the plant sample, rather than actual cost increases over time. For example, the 2021 butter plants surveyed tended to be larger than the 2023 butter plants surveyed, accounting for a significant portion of the cost difference between the two surveys. Some witnesses at hearing also noted the 2023 survey captured 2022 costs, a time of historically high inflation which has since moderated.

The second notable difference was the 2023 survey used the non-transformation methodology of allocating unallocated costs on a solids basis. The survey author indicated mixed industry feedback on the transformation allocation methodology used in the 2021 survey, as many participants stated allocating costs on a solids basis is standard practice. To facilitate comparison of the two surveys the author also presented updated 2021 survey results using the non-transformation allocation methodology.

In support of a separate data set, mandatory and audited 2004–2016 California manufacturing cost survey results, conducted by the CDFA, were entered. These surveys formed the historical data used to forecast current costs in the CA Forecast described below. The 2006 CDFA study was used by USDA when determining the current FMMO make allowances.

The fourth data set, entered on behalf of IDFA, was a result of a statistical model that used data from the 2004–2016 California manufacturing cost surveys and other known input prices and productivity data (for example, the producer price index) to project future California manufacturing costs, referred to hereinafter as the CA Forecast. The study author testified the model predictions were a better estimate of costs than a simple trend analysis since they accounted for the impacts of other factors, such as accelerating inflation, that are known to describe changes in manufacturing costs in California. Unlike the 2021 and 2023 surveys which evaluated six cost categories (processing labor, utilities, packaging, non-labor or utilities processing, general and administrative, and return on investment), the CA Forecast only estimated three cost categories (labor, utility, and other). Other costs were defined as the remaining costs after labor and utility costs were deducted. Inasmuch as the CDFA results were used by USDA when previously amending make allowances, proponents argued this statistical estimation of what CA manufacturing costs might have been for 2022 would be a helpful indicator to validate other manufacturing cost data entered into the record.

These data sets were the basis of the manufacturing allowance levels proposed by stakeholders at the hearing. Two sets of make allowance levels were offered ($/pound):

Product	Proposal 7	Proposals 8 and 9			
	NMPF	IDFA/ WCMA year 1	IDFA/ WCMA year 2	IDFA/ WCMA year 3	IDFA/ WCMA year 4
Cheese	0.2400	0.2422	0.2561	0.2701	0.2840
Dry Whey	0.2300	0.2582	0.2778	0.2976	0.3172
NFDM	0.2100	0.2198	0.2370	0.2544	0.2716
Butter	0.0210	0.2251	0.2428	0.2607	0.2785

NMPF asserted that their proposed levels take a balanced approach between recognizing increased manufacturing costs and the impact to producers if there is a significant increase from current levels. They testified that while they evaluated the 2021 survey when developing their proposal, the levels they ultimately proposed were a consensus judgment of all NMPF members. By their own description, the proposal is not intended to reflect the entirety of current manufacturing costs. NMPF witnesses argued that their proposal would update make allowances to be a closer reflection of manufacturing costs, but further increases could not be justified because of the potential impact to producers. They argued that until a mandatory cost survey can be conducted to provide assurances of accuracy in the calculation of manufacturing costs, any increases larger than they proposed would reduce producer revenue, lower already slim (if any) margins, and negatively impact the availability of adequate supplies of milk for fluid use. They considered such consequences disorderly.

NMPF stressed current make allowances are too low and have resulted in cooperative reblending as a method of sharing losses among cooperative members who own manufacturing plants. NMPF witnesses also testified to receiving reduced premiums from manufacturing plant customers as they attempt to recoup costs not covered by the current make allowance levels. Reduced and/or deferred plant investment caused by inadequate make allowances was also a theme discussed by many witnesses. Cooperative witnesses spoke of the disproportionate burden on cooperatives with balancing plants, which inherently have higher manufacturing costs as they do not operate continuously at full capacity because of the market-wide balancing role they necessarily assume.

NMPF cooperative witnesses and dairy farmer members presented evidence on increasing farm production costs and slim farm margins. They opined that the impact to producers should be considered when determining appropriate make allowance levels.

WCMA and IDFA offered separate, but identical proposals. Their proposed make allowance levels were derived from the average of the 2023 study and the CA Forecast, plus a $0.0015 marketing cost factor. The proposals contained a 4-year implementation schedule with 50 percent of the increase implemented in year 1 and the remaining 50 percent implemented evenly across the next 3 years. Proponents offered a phased implementation schedule in recognition of the impact that sudden, large increases in make allowances would have on producer revenue.

WCMA and IDFA witnesses asserted there are limits to a manufacturing handler's ability to lower costs through efficiencies. As make allowances have not been increased in over 15 years, the witnesses stated plants have reached the limit on capturing cost efficiencies, and inadequate make allowances are now impacting innovation and capital investments. Manufacturing handlers testified their costs of manufacturing have increased and are in line with the 2021 and 2023 survey results. As a consequence of inadequate make allowances, the witnesses said classified prices are overvaluing raw milk. To substantiate the claim, witnesses compared producer mailbox prices with FMMO blend prices. In regions where mailbox prices (which contain premiums and deductions reflecting reblending) are below blend prices, the witnesses asserted regulated prices are too high, as manufacturers have lowered market premiums to make up for high manufacturing costs.

The record clearly demonstrates that make allowance levels are not reflective of the costs manufacturers incur in processing raw milk into the finished bulk products of cheese, butter, NFDM, and dry whey. This was one of the only facts to which all participating parties agreed and offered evidence in support, as discussed above. However, there were divergent views on what should constitute adequate make allowance values going forward.

Since 2000, when product pricing was adopted, FMMO decisions have consistently relied on surveys of observed manufacturing costs to determine proper make allowance levels. Previous make allowances have been derived in whole, or in combination with, surveys conducted by CPDMP, CDFA, and the USDA Rural Business Cooperative Service. The importance of relying on actual, observed costs cannot be overstated. FMMO price formulas determine the classified prices handlers pay to dairy farmers. It is important that all variables reflect actual market conditions.

While the use of modeling is helpful for policy analysis, the evidentiary record of this proceeding contains adequate observed market data to determine make allowance levels without the need to rely on model assumptions. Modeling involves a host of assumptions made by the modeler, as was described by the CA Forecast author, which result in estimates with a wide confidence interval. In other words, cost estimates could have a wide range of possible values consistent with the model. The confidence interval for the cost estimates widens when some indexes used to forecast are not specific to dairy manufacturing. Economic modeling was considered and rejected during Order Reform as a replacement for the Basic Formula Price. This decision affirms the Department's long-held position that this type of modeling, requiring extensive assumptions, is not an appropriate methodology for determining make allowances when superior information is available. As it is common for participants to not reveal confidential information such as manufacturing costs, the cost surveys contained in evidence provide the best available information on observed costs for this proceeding. Accordingly, this decision does not find justification for

using the CA Forecast in determining appropriate make allowances levels.

In opposition to Proposals 8 and 9, cooperatives and dairy farmer members offered substantial testimony regarding the potential impact to dairy farmers should make allowances be significantly increased. Accordingly, they recommend adoption of the NMPF proposal as it attempts to temper the impact to producers.

FMMOs are designed to provide for orderly marketing through classified prices paid by handlers and marketwide pooling to determine average minimum blend prices paid to producers. As FMMO formulas are market-oriented, the product prices that drive classified prices are chosen to reflect current supply and demand conditions. This was last reiterated by the Department in 2013, writing ''when the supply of milk is insufficient to meet the demand for Class III and Class IV products, the prices for these products increase as do regulated minimum milk prices paid to dairy farmers; because the milk is more valuable and the greater value is captured in the pricing formulas.'' 78 FR 9248 (Feb. 7, 2013). Further, the Secretary is expressly authorized in the AMAA to set prices to reflect ''. . . the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products. . . .'' 7 U.S.C. 608c(18). This concept was discussed and validated by a Federal court and is relevant to this proceeding. *Bridgewater Dairy, LLC et al.* v. *USDA,* No. 3:07–cv–104, 2007 WL 634059 (N.D. Ohio, 2007). Therefore, the potential impact to producers remains an inappropriate factor in determining make allowance levels. While many stakeholders look to the FMMO program to provide stability, it is not within FMMO authority to support dairy farmer income.

Accordingly, record evidence does not support adoption of Proposal 7, whose make allowances levels are not reflective of observed costs provided in evidence and is designed to dampen the impact to producers.

A vast majority of hearing participants supported a USDA-administered, mandatory, and audited survey as the most appropriate method for obtaining observed cost data to determine make allowance levels. Some witnesses asserted make allowances should not be changed until such a survey is administered and results published. Conducting such a survey is not currently authorized by law. The lack of a mandatory survey has not been reason to delay two previous updates to make allowance levels, and its continued lack of existence now is not a reason for delaying such an update in this proceeding. As discussed, the record of this proceeding clearly demonstrates manufacturing costs have increased since make allowance levels were last changed. Given the body of evidence, this decision finds it appropriate to increase make allowances to ensure the price formulas better reflect manufacturing costs and provide for more orderly marketing conditions.

The record reveals the voluntary, unaudited nature of the 2021 and 2023 surveys are met with reluctance by some stakeholders, particularly the producer community. Questions regarding plant sampling, cost allocation methodology, and capturing of a high-cost time period expressed on the record are legitimate considerations. Issues with the results of voluntary, unaudited surveys are not new to the process of determining make allowances. Similar situations occurred in both the 2006 and 2007 rulemakings. In both instances, make allowances were determined by using parts of different survey results. The record of this proceeding supports the same considerations.

What remains for this recommended decision to determine are proper make allowance levels given the survey data contained in evidence: the 2021 survey; the 2023 survey; and the 2016 CA survey. The record does not support consideration of the 2021 survey results that relied on the transformation cost allocation method for allocating unallocated costs. Hearing participants expressed skepticism of this method as it is standard industry practice to allocate costs on a solids basis. Although the study author explained how the transformation numbers were assigned to products, the record does not contain sufficient evidence to validate the new methodology. Whether or not the transformation methodology is theoretically more accurate is not relevant. What is germane is that manufacturers allocate costs, manage their plants, and make marketing and pricing decisions in accordance with the traditional method of allocating fixed and unallocated costs on a pro-rata basis of milk solids in the final products. Accordingly, the 2021 survey results utilizing this methodology were not considered when determining the levels recommended in this decision. The revised 2021 and 2023 surveys, using non-transformed survey results, and the 2016 CA survey results were used in determining the make allowances recommended in this decision. Relying on a combination of these survey results provides a consensus set of data to determine appropriate make allowance levels and is superior to relying only on one survey.

Cheese

	2021 Non-transformed	2023 Non-transformed	2016 CA survey	Current	USDA proposed
Low Cost		$0.2201			
High Cost		$0.3181			
Average	$0.2365	$0.2643	$0.2454	$0.2003	$0.2504
# Plants	10	18	4		

This decision recommends a $0.2504 per pound cheese make allowance, derived from the average of the 2021 and 2023 non-transformed survey results. The 2023 survey incorporates a representative sample size, accounting for 55.6 percent of NASS cheddar cheese production. The record indicates the 2023 survey, which collected cost data primarily from 2022, covered a period of relatively high inflation and rising input costs. An example is packaging costs—lumber and corrugated materials—which testimony indicates have receded since peaking in 2022. Absent any other data on the record, this decision finds it appropriate to utilize an average of the 2023 and 2021 non-transformed survey results to ensure the recommended cheese make allowance is not disproportionately affected by higher 2022 costs that have since moderated. The decision finds use of the 2021 and 2023 surveys provides a manufacturing allowance reflective of the national cheddar cheese market. In 2022, California cheddar cheese production represented approximately 6.9 percent of reported NASS cheddar cheese production. As incorporation of the 2016 CA survey would result in an over representation of California cheese

manufacturing costs, this decision does not support its consideration.

Butter

	2021 Non-transformed	2023 Non-transformed	2016 CA survey	Current	USDA proposed
Low Cost		$0.2616	$0.1838		
High Cost		$0.4210	$0.2149		
Average	$0.1338	$0.3176	$0.1938	$0.1715	$0.2257
# Plants	12	13	7		

This decision recommends a $0.2257 per pound butter make allowance, derived from the average of the 2021 and 2023 non-transformed survey results. While the 2021 and 2023 surveys had roughly the same number of reporting plants and represented roughly the same volume of NASS U.S. butter production (approximately 80–82 percent), the plant samples differed significantly. The study author claimed sampling was the main driver for the notably different survey results. The 2023 survey captured data from both smaller and larger plants while the 2021 survey consisted of a more homogenous sample of larger and more efficient plants. The record indicates the 2023 survey, which collected cost data primarily from 2022, covered a period of relatively high inflation and rising input costs. According to the Producer Price Index for All Commodities (PPI), published by the Bureau of Labor Statistics, prices have moderated since their June 2022 peak. Thus, this decision finds it appropriate to average the 2023 and 2021 non-transformed surveys to ensure the recommended butter make allowance is not disproportionately affected by higher 2022 input costs that have since moderated and account for the differences in plant sampling. The decision finds use of the 2021 and 2023 surveys provides a manufacturing allowance reflective of the national butter market, as both surveys represent over 80 percent of 2022 NASS butter production volumes. This decision does not support incorporating the 2016 CA survey in the calculation as it would overrepresent California butter manufacturing costs.

NFDM

	2021 Non-transformed	2023 Non-transformed	2016 CA survey	Current	USDA proposed
Low Cost		$0.2302	$0.1854		
High Cost		$0.3247	$0.2786		
Average	$0.2454	$0.2750	$0.2082	$0.1678	$0.2268
# Plants	27	15	8		

This decision recommends a $0.2268 per pound NFDM make allowance, derived from the average of the 2021 non-transformed survey and 2016 CDFA cost of processing survey results. In 2022, California represented 43.7 percent of U.S. NFDM production. This supports hearing testimony describing the importance of California manufacturing facilities in the total U.S. production of NFDM powder. Therefore, this decision finds it appropriate to place more emphasis on California NFDM plant costs considering the dominant share of NFDM production by California plants. As 2016 was the last CDFA study published, and it contains audited data, unlike the 2021 and 2023 surveys, it is appropriate to use as one of the surveys to determine the recommended average make allowance. As stated previously, given all the cost surveys contained in the evidentiary record have shortcomings, this decision finds it appropriate to use an average of two surveys when recommending make allowances. Regarding a NFDM make allowance, what remains is consideration of either the 2021 or 2023 survey. In the 2023 survey, significantly fewer plants participated and record evidence suggests at least one large NFDM manufacturer did not participate. The record reveals the 2021 survey to be a better representation of plants producing NFDM in the U.S. than the 2023 survey. Additionally, as NFDM production is heavily energy dependent, the 2023 survey captured the historically high energy costs, particularly natural gas, that have since moderated. Utilizing the 2021 survey figures moderates the influence of the high inflationary period experienced in 2022, particularly for energy and utilities.

Dry Whey

	2021 Non-transformed	2023 Non-transformed	2016 CA survey	Current	USDA proposed
Low Cost		$0.2848			
High Cost		$0.3952			
Average	$0.2457	$0.3361		$0.1991	$0.2653
# Plants	8	9			

This decision recommends a $0.2653 per pound dry whey make allowance, derived from the 2021 non-transformed survey and 2023 non-transformed low-cost survey result. Similar to NFDM, dry whey production is heavily energy dependent, and the same concerns regarding the 2023 survey results exist for dry whey. The record reflects incrementally higher drying costs are incurred when drying whey compared to NFDM due to the higher moisture content in whey. Natural gas prices increased substantially between 2019 and 2022. The Henry Hub Natural Gas Spot Price increased 153 percent between 2019 and 2022. However, prices declined in 2023, with the spot

price falling by 61 percent. Natural gas prices in 2023 were comparable to prices in 2019, with the spot price one percent lower than in 2019. Compared to 2016, natural gas prices were slightly lower in 2023, with spot prices about 4 percent below 2016 levels. These data suggest natural gas prices are similar to price levels observed during the Stephenson 2021 survey. Absent any other data on the record, this decision finds it appropriate to utilize the 2023 non-transformed low-cost average ($0.2848) with the 2021 non-transformed survey to ensure the recommended dry whey make allowance is not disproportionately affected by higher 2022 energy and utilities costs that have since moderated.

The record does not support inclusion of a $0.0015 per pound marketing cost for any of the four make allowances. While supported by a few participants in both testimony and post-hearing briefs, no data was provided to validate $0.0015 as an appropriate estimation of marketing costs.

The make allowances recommended in this decision are more representative of manufacturing costs than current make allowances, which were last changed in 2008. Record evidence clearly supports updates; however, as previously mentioned, each of the surveys of observed costs has weaknesses. The recommended make allowance levels are the best approximation of manufacturing costs given publicly available data and evidence contained in this proceeding's record. In accordance with long-standing practice, this decision does not recommend delaying the implementation of make allowances determined to best reflect current conditions. Should these make allowances be approved by producers, they would be implemented through the publication of a final rule.

b. Butterfat Recovery

Currently, the Class III formulas contain a 90-percent butterfat recovery assumption. This represents the percentage of butterfat in raw milk that can be recovered during the cheesemaking process, recognizing that for both theoretical and practical reasons, 100% of utilization of butterfat (or any other raw milk component) in the production of a dairy product is impossible. Proposal 10 seeks to increase the butterfat recovery assumption to 93 percent. Proponents claimed modern cheesemaking equipment and better cheese handling techniques make a higher butterfat recovery not only attainable, but common in practice.

Opponents mainly consisted of manufacturers asserting that while some cheese plants attain butterfat recovery percentages in excess of 90 percent, yield assumptions that increase producer revenue, such as butterfat recovery, should not be amended outside a comprehensive review of all assumptions that determine yield factors. Multiple opponents mentioned the overvaluation of whey cream as an example of a potential issue.

This rulemaking proceeding sought to consider changes to the FMMO pricing formulas. Industry participants were invited to submit proposals concerning the current pricing provisions of the FMMOs. Those opposing changes to the butterfat recovery percentage had an opportunity to submit proposals on any of the yield factors, as they fall within the provisions of the pricing formulas. None, other than those submitted by Select, were received. This decision does not find it appropriate to deny consideration of any yield related proposal presented in this proceeding on the basis of a potential future evaluation of all yield factors.

The record contains testimony from several expert witnesses explaining the cheesemaking process and use of more modern cheese equipment and technology, including improvements in coagulants and curd handling, allowing handlers the ability to capture a larger percentage of butterfat in cheese. As butterfat recovery numbers are considered confidential information, the record does not contain a well-developed picture of recovery levels in U.S. cheese plants. The record indicates the age of equipment and technology used in cheese plants varies widely. While evidence was submitted describing high butterfat retention rates that are achievable using new equipment, it does not demonstrate those rates are reflective of the general industry conditions. Other than a few new, very modern plants, the record does not support a 93 percent butterfat recovery factor as attainable by most cheese plants.

The record contains considerable testimony estimating current butterfat recovery rates in the universe of cheese plants with varying ages of equipment and technology. Expert witnesses estimated butterfat recovery in cheddar plants ranged from 88 to 93 percent, attributing much of the difference to cheddar vat equipment. It is important that the product price formulas reflect current, not theoretical, conditions for the general population of plants. Experts generally offered that most commodity cheddar cheese plants can obtain greater than 90 percent recovery, but few obtain 93 percent, with a 91 percent butterfat recovery rate considered the industry average. Accordingly, this decision recommends a 91 percent butterfat recovery rate. Such an increase necessitates a change to the butterfat yield factor in cheese from 1.572 to 1.589.

c. Farm-to-Plant Shrinkage

Currently, the FMMO formulas assume a farm-to-plant shrinkage factor of 0.25 percent. This represents normal milk losses that occur when milk is delivered from the farm to a plant. Under the FMMO system, most handlers purchase milk from producers based on farm weights and tests. The shrinkage factor recognizes that when milk is pumped from a farm bulk tank to a milk tanker, and then from milk tanker to the plant silo, milk sticks to the sides of the pipes and tanks. Milk can also be lost in the milk hauling process when milk haulers must make multiple farm stops to fill a load. As a result, plants often physically receive less milk than was measured at the farm. In recognition of this reality, the yields are slightly reduced to reflect the amount of milk actually available to make a product, as compared to the amount of milk picked up on farms.

The proponents asserted that producers shipping full tanker loads is common in the Southwest where they operate. They testified to and provided cooperative data regarding the steps they have taken to reduce shrinkage. Proponents said increased average farm size results in fewer stops by the milk hauler to fill up a load, thus lowering overall shrinkage. They opined shrinkage should no longer be a reality for farms as losses can be managed on any size farm through adoption of farm scales, flow measurements, and other technologies to improve accuracy.

Opponents argued only a small percentage of dairy farms are able to produce enough milk to fill an entire tanker load. While the number of large farms has grown, opponents testified removing the shrinkage factor could further incentivize manufacturers to prefer large over small farms. Consequently, they opined the farm-to-plant shrinkage factor should remain.

Record evidence reveals most dairy farms are unable to fill a tanker load per day. According to the NASS, daily milk production per cow averaged 66.5 pounds in 2022. Assuming an average tanker load of milk is approximately 48,000 pounds, it would require a milking herd of 722 cows to fill a tanker. In 2022, of the 24,470 U.S. dairy farms

with milk sales, only 3,451 farms (approximately 14 percent) had 500 or more milk cows, and 2,013 (approximately 8 percent) had 1,000 or more milk cows.

For the approximately 90 percent of farms that are not able to ship full tanker loads of milk, the record indicates farm-to-plant losses remain a reality for most producers and cooperatives operating within the FMMO system. As most handlers pay producers based on farm weights and tests, it remains appropriate to provide recognition in the formulas for milk solids paid for but not physically received at the handler's facility. Accordingly, Proposal 10 is not recommended for adoption.

d. Nonfat Solids Yield

Currently, the FMMO Class IV price formula contains a NFDM yield factor of 0.99, representing the pounds of NFDM that can be made from one pound of nonfat solids of raw milk delivered from the farm. This factor is less than 1.0, as it recognizes both farm-to-plant shrinkage and the portion of nonfat solids utilized in NFDM.

Select offered Proposal 12 to adjust the NFDM yield factor to account for both the NFDM and buttermilk powder that can be manufactured from the same pound of nonfat solids, and proposed an NFDM yield factor of 1.02. Proponents claim producers are not compensated for nonfat solids that end up in buttermilk powder since such production is not accounted for in the yield factor.

A review of previous rulemakings reveals numerous changes to the NFDM yield factor both during and since Order Reform. The Order Reform recommended decision contained a nonfat solids yield factor of 0.96 as a divisor (equivalent to a 1.04 multiplier) in the nonfat solids price equation. It represented the percent of nonfat solids in a pound of NFDM. In other words, if a NFDM plant had 1 pound of nonfat solids, it could make 1.04 pounds of NFDM due to the moisture content in the final product. The factor was changed in the Order Reform final decision to 1.02 (equivalent to a 0.98 multiplier) as stakeholders commented it should represent both the NFDM and buttermilk powder that could be produced from one pound of nonfat solids.

The nonfat solids yield factor was again considered in a 2000 rulemaking. Initially, the factor was amended to 1.00. 65 FR 82832 (Dec. 28, 2000). During that proceeding, stakeholders argued the yield factor should reflect that more than one pound of NFDM can be manufactured from one pound of nonfat solids, resulting in a divisor less than one, or a multiplier greater than one. Evidence from that proceeding was used to demonstrate a calculation using only the NFDM price, NFDM make allowance, and a multiplier of 1.00 would be equivalent to a more complex formula attempting to combine the NFDM and buttermilk net prices using corresponding yield factors.

The final decision in the 2000 rulemaking changed all yield factors, including the nonfat solids yield, from divisors to multipliers. 67 FR 67906 (Nov. 7, 2002). Keeping in line with only reflecting the nonfat solids used in NFDM, the nonfat solids yield multiplier changed from 1.0 to 0.99, with the incorporation of a farm-to-plant shrinkage factor of 0.25 percent. As calculated, for 1 pound of nonfat solids leaving the farm, 0.9975 pounds entered the plant (1.00 − 0.0025 = 0.9975). Subtracting an estimated 0.0479 pounds of nonfat solids ending up in buttermilk powder left 0.9496 pounds of nonfat solids in NFDM (0.9975 − 0.0479 = 0.9496). It was assumed NFDM is 96.2 percent nonfat solids, resulting in a NFDM yield factor calculation of 0.9496/0.962 = 0.9871, which was rounded to 0.99. The final decision made clear the 0.99 should be considered a NFDM yield factor, no longer a nonfat solids yield factor as was the case when Order Reform was implemented.

Proposal 12 requests buttermilk powder again be incorporated into the NFDM yield. Proponents testified that without accounting for buttermilk powder, producers are not compensated for all the nonfat solids they sell to a Class IV manufacturer. Record evidence does not support such a claim. Class IV manufacturers are required to pay the nonfat solids price for pooled milk purchased, regardless of whether those nonfat solids end up in NFDM, butter, buttermilk powder, or any other Class IV product. The same can be said for other classified products whose component prices are computed similarly, even if there are numerous products in the category. For example, the other solids price is determined through a survey of dry whey prices and a dry whey make allowance. Manufacturers pay the other solids price even if they are making other products in the category, such as whey protein concentrate or whey protein isolate.

Additionally, while the rulemaking history of the NFDM and nonfat solids yield factors is complex, evidence does not support that attempting to reflect two products (buttermilk powder and NFDM) in the NFDM yield would provide for more orderly marketing conditions. Recommendations are made throughout this recommended decision attempting to simplify, where possible, an already complex set of pricing formulas. As such, this decision finds it appropriate to maintain the current NFDM yield factor that only reflects one product. Accordingly, Proposal 12 is not recommended for adoption.

Base Class I Skim Milk Price

Currently, the base Class I skim milk price, also referred to as the ''Class I mover'' or ''mover,'' is the simple average of the monthly advanced Class III and Class IV skim milk pricing factors, plus an adjuster of $0.74 per cwt. This formula was implemented under the 2018 Farm Bill, which amended the AMAA to revise the provisions related to determining the monthly Class I skim milk price. Public Law 115–334, 132 Stat. 4490 § 1403. Congress exempted this amendment from the formal rulemaking process, and USDA implemented the change through a final rule. The formula has been in effect for milk marketed on and after May 1, 2019. 84 FR 8590 (March 11, 2019). Prior to the change, the base Class I skim milk price was the higher of the advanced Class III or Class IV skim milk prices (the ''higher-of''), announced on or before the 23rd of the prior month. The higher-of formula had been in effect since January 1, 2000.

Industry stakeholders offered six proposals to amend the Class I mover. Proposal 13 would return to the previous higher-of Class I mover. NMPF explained the change to the average-of was supported at the time by both NMPF and IDFA, as it was intended to be revenue neutral for producers and provide Class I processors the ability to utilize hedging for risk management.

IDFA and MIG proposed maintaining the average-of mover but recommended different calculations for the adjuster. Proposal 14, offered by IDFA, incorporates an adjuster that resets every January and would be the higher of either: (1) $0.74; or (2) the 24-month average difference between the higher-of and the average-of the advanced Class III and Class IV skim milk pricing factors. The 24-month calculation would run from August of three years prior to July of the previous year. For example: the 2024 adjuster would have been calculated by subtracting the average of the advanced Class III and IV skim pricing factors from the higher of the advanced Class III or Class IV skim pricing factor for each month of August 2021 through July 2023, then averaging the differences of the 24 months. The result for the August 2021 to July 2023

time period is $0.95, which is higher than $0.74, and thus would have been the adjuster effective January 1, 2024, for the calendar year. For the month of January 2024, the advanced Class III and IV skim pricing factors were $5.74 per cwt and $9.25 per cwt, respectively, averaging to $7.50 per cwt. With the addition of the adjuster, the January 2024 base Class I skim milk price would have been $8.45 per cwt ($7.50 + $0.95) under Proposal 14.

Proposal 15, offered by MIG, incorporates a monthly rolling average adjuster calculated as the difference between the higher-of and the average-of, for 24 months, with a 12-month lag. For example, the adjuster for January 2024 would have been $1.01 per cwt, calculated from the 24-month average difference of the higher of the advanced Class III or Class IV skim pricing factor less the average of the advanced Class III and IV skim pricing factors from January 2021 to December 2022. The January 2024 advanced Class III skim pricing factor was $5.74 per cwt and advanced Class IV skim pricing factor was $9.25 per cwt, resulting in an average of $7.50 per cwt. The average-of, with the addition of the adjuster, would result in a January 2024 base Class I skim milk price of $8.51 per cwt ($7.50 + $1.01) under Proposal 15.

Edge offered Proposals 16 and 17. The Class I mover in Proposal 16 would be the announced Class III skim milk price, plus an adjuster reflecting the 36-month average of the difference between the higher-of the advanced [2] Class III or Class IV skim milk prices and the announced [3] Class III skim milk price from August of four years prior to July of the previous year. The adjuster would be calculated annually and be effective January of each year. For example: The adjuster for 2024 would be $1.64 per cwt, calculated from the 36-month average difference of the higher of the advanced Class III or Class IV skim pricing factor and the announced Class III skim milk price from August 2020 to July 2023. The announced Class III skim milk price for January 2024 was $4.92 per cwt, and with the addition of the adjuster would result in a January 2024 base Class I skim milk price of $6.56 per cwt under Proposal 16. Proposal 17 would return to the previous higher-of calculation. Both Proposals 16 and 17 would eliminate advanced pricing for Class I and Class II milk. Edge preferred Proposal 16, stating it would facilitate Class I hedging.

The AFBF offered Proposal 18, which is nearly identical to Proposal 17. Both Edge and the AFBF stressed the importance of eliminating advanced pricing as a means for limiting price inversions that result in significant volumes of milk not pooled.

NMPF presented testimony describing how the 2019 mover change was not revenue neutral, which is why they seek a return to the higher-of. NMPF and dairy farmers described volatile markets in response to the COVID–19 pandemic. Even as the COVID–19 pandemic has ended, prices have remained volatile, and stakeholders opined they expect volatility to continue. NMPF witnesses asserted that because of the current formula and volatile markets, there is no way for the impact to dairy farmers to be revenue neutral in the long term.

According to NMPF, an unanticipated consequence of the average-of mover is the asymmetric risk borne by dairy farmers. NMPF explained the static nature of the $0.74 adjuster means that dairy farmers only benefit from the average-of when the difference between the advanced Class III and Class IV skim milk prices is less than $1.48. When the difference is greater, producers are paid less, sometimes significantly less, than they would have been under the higher-of mover. During the 50-month period from May 2019–June 2023, the average-of mover was lower than the higher-of in 27 months. NMPF asserted when the average-of exceeded the higher-of, it did so by no more than $0.74, regardless of the magnitude of the difference between Class III and Class IV skim milk prices. However, when the average-of was lower than the higher-of, the reduction could be significantly more than $0.74. NMPF cited October 2022 as an example. At that time, the average-of was lower than the higher-of by $2.08. According to NMPF, from May 2019 to August 2023, producers were paid $998.3 million less than they would have if the higher-of mover had been in place.

Both IDFA and MIG asserted their adjusters would result in revenue neutrality to producers over time because of regular updates to better reflect current market conditions, whereas the current static $0.74 adjuster reflects market conditions from 2000–2018. IDFA further claimed the $0.74 floor contained in Proposal 14 ensures producers would receive Class I skim milk prices at least equating to what they receive under the current formula. MIG opined a rolling average adjuster would provide better dynamic market signals while also stabilizing prices through more gradual monthly changes.

In justifying these methods to continue an average-of mover, IDFA and MIG witnesses stressed the importance of maintaining the ability for Class I processors to hedge their future prices. The use of an average-of mover would allow them to continue to spread risk by taking equal positions in the Class III and Class IV futures and options markets. IDFA and MIG maintained hedging is a critical tool for certain processors, particularly ESL, to remain competitive with alternative beverages, such as bottled water, juice, and milk alternatives that do not face the same regulatory pricing framework as fluid milk. The ability to lock in a future price makes their cost known and allows a longer price horizon. They further asserted promoting and growing the sale of milk is a goal of the AMAA, which can be achieved using hedging. Both proponents explained a processor's ability to hedge is not negatively impacted by the adjuster calculation (whether monthly or annually), so long as it is announced well in advance. IDFA was amenable to either adjuster calculation, so long as the average-of mover is maintained.

Proponents of maintaining an average-of mover argued Congress amended the AMAA to facilitate risk management for Class I, and as it directed the Department to adopt the average-of mover, the Department must now continue that policy and refrain from taking action that would inhibit risk management. However, in the 2018 Farm Bill, Congress stipulated the average-of mover must be maintained for a period of not less than two years, at which time the formula could be modified through the standard FMMO amendment process. Congress did not direct that risk management consideration must be maintained beyond the two years following implementation of the 2018 Farm Bill.

To evaluate the NMPF claim regarding asymmetric risk, AMS analyzed May 2019–December 2023 prices (56 months). The analysis found the current average-of mover to be greater than the higher-of mover in 23 months, resulting in $334 million in additional revenue paid to producers in those months. The two movers were equal in 2 months, and in the remaining 31 months, the average-of mover was less than the higher-of mover, resulting in $1.4 billion less in revenue paid to producers in those months than would have been without the mover change. The net result to dairy farmers during those 56 months was negative $1.066 billion. Further, in months when the

[2] Advanced refers to prices announced on or before the 23rd of the prior month.

[3] Announced refers to prices announced on or before the 5th of the following month.

average-of was more than the higher-of mover, the difference was never greater than $0.74 and, mathematically, could never be greater than that amount under the current average-of system. However, in months when the average-of was less than the higher-of mover, the difference was as great as $5.19. This analysis supports NMPF's assertion of the asymmetric risk borne by producers under the current mover calculation.

The record reveals the $0.74 static adjuster was adopted because, at the time, it represented the additional value paid to producers through the higher-of versus what would have been the average-of mover from 2000–2017. Evidence shows $0.74 is no longer representative of the additional higher-of value to producers as Class III and IV prices have become significantly more divergent in recent years. A comparison of advanced Class III skim and Class IV skim milk prices from January 2000–April 2019 and from May 2019–December 2023 illustrates the increased volatility. From January 2000–April 2019, when the Class I skim milk price was determined by the higher-of mover, the monthly difference in advanced prices ranged from $0 to $6.77. From May 2019 through December 2023, the range was $0 to $11.86, equating to an increase of slightly more than 75 percent.

Testimony described rapidly changing Class III and IV prices resulting not only in months when the Class I mover was significantly lower than it would have been under the higher-of formula, but times when the Class I price (announced before the month) was less than the Class III and/or Class IV price (announced after the month). As handlers have the option to pool Class III and Class IV milk, this price inversion led to many months when the higher-valued manufacturing milk was not pooled. Testimony on the record described several consequences: (1) manufacturing handlers opted out of pool participation, keeping the higher market revenue instead of sharing it with all pooled producers; (2) instances when a manufacturing handler opted out of pool participation, and the historically high market revenue was not shared with their own producer suppliers; and (3) significant disparity in payments to pooled and nonpooled producers in some months.

Testimony detailed the conditions in 2020 when the demand for cheese relative to butter rapidly widened the spread between Class III and Class IV Prices. For example, the base Class I skim milk price for June 2020 (announced May 20, 2020) was $7.08 (based on an $6.68 advanced Class III skim milk price and an $5.99 advanced Class IV skim milk price). Cheese prices rose rapidly during the month, resulting in a $15.06 Class III skim milk price and $6.62 Class IV skim milk price. According to record evidence, high volumes of Class III milk were not pooled in order to avoid paying the higher valued Class III price into the marketwide pool.

Record data reveals a significant increase in the estimated volume of milk not pooled in 2020 and 2021, which NMPF attributed to price volatility. Data shows milk volumes not pooled in 2020 and 2021 were approximately 60 percent greater than in 2019. Testimony and evidence pointed to pronounced price volatility being considered the norm, not the exception, going forward.

Record evidence also shows how the lower average-of mover value resulted in muted blend prices in some regions of the county, making it difficult to attract milk supplies for fluid use. This was particularly a concern in the southeastern FMMOs which experienced a disproportionate reduction in blend prices relative to other FMMOs because of their high Class I utilization. Testimony described how blend prices between the Southeast FMMO and nearby orders narrowed, making it difficult to attract supplemental milk to meet the fluid demand in the milk deficit region.

During Order Reform, the Department considered numerous options for determining Class I prices as it evaluated an appropriate Class I pricing system. In the Order Reform recommended decision, several variations of an average mover were considered, including a moving average and a declining average weighted most heavily by the current month's price, along with a higher-of option based on the second preceding month's prices. When considering its recommendation, the Department evaluated each option's ability to improve price stability while maintaining appropriate producer price signals to ensure an adequate supply of milk for fluid use.

The Department initially recommended a 6-month declining average of the higher-of the Class III and Class IV skim milk prices. The goal was to ''decrease monthly Class I price volatility while minimally affecting the long-run price.'' 63 FR 4802, 4886 (Jan. 30, 1998). Analysis of that option compared to the higher-of option showed only a two-cent difference based on data from 1992–1997, thus supporting the notion an average-of price would not impact prices in the long run. Public comments in response to the recommended decision cautioned the Class I price should be closely and directly linked to manufacturing prices. Commenters opposed a six-month declining average because it would delay the linkage with the Class I price, resulting in counter-cyclical pricing—something noted in the final decision, which stated that, for example, if Class I prices are undervalued, ''it reduces producers' pay prices at a time when the producers should be receiving a positive price signal.'' 64 FR 16026, 16102 (Apr. 2, 1999). Analysis conducted for the Order Reform final decision evaluated prices post-1998 and found using a 6-month average mover during times of increased price volatility would have led to price inversions. The decision explained how price inversions could lead to depooling under which disorderly marketing conditions may arise. As a result, the final decision also articulated, on the same page as the most recently noted quotation, ''because handlers compete for the same milk for different uses, Class I prices should exceed Class III and Class IV prices to assure an adequate supply of milk for fluid use.'' Accordingly, the final decision recommended the higher-of mover which remained in place until May 2019.

Record evidence clearly shows that the price inversions and depooling predicted in the Order Reform final decision occurred after the average-of mover was implemented in 2019. The principle of maintaining a proper link between Class I and manufacturing prices to avoid price inversions and depooling remains an important consideration in evaluating change to the Class I mover in this rulemaking.

Proponents offering modifications to the average-of mover acknowledge price inversions and depooling have occurred with greater frequency and duration. However, they maintain hedging is a critical risk management tool that should be preserved and cannot be achieved using the higher-of mover. Record evidence highlights that although both HTST and ESL are fluid milk products, there are notable differences between HTST and ESL processing and sales. ESL products require unique processing techniques and packaging that significantly increase product shelf-life. The record indicates ESL products have a shelf-life of at least 65 days; some ESL processors stated their products have a shelf-life of 120 days or more.

ESL processors described marketing differences between the two types of products. ESL products: (1) have a longer shelf-life which facilitates a wider distribution; (2) are typically

shipped to centralized retail warehouses (distribution centers) and from there are distributed to individual stores by the store owners; and (3) are sold to retail customers who prefer long-term contracts and a long lead time for any price changes, often 60–90 days or more. This is significantly different than HTST products that: (1) have a significantly shorter self-life (common range is 14–21 days) necessitating more local distribution; (2) are typically distributed through direct-store-delivery (DSD); and (3) whose retail customers are accepting of FMMO Class I prices that vary monthly.

ESL processors explained the average-of mover has enabled them to meet customer demand for long-term price-fixed contracts by using the futures and options market to hedge the risk associated with changes in monthly FMMO Class I prices. They credit the ability to manage risk as a factor in the growth of ESL products. Before adoption of the average-of mover, processors of ESL products took on a significant amount of price risk to meet the long-term, fixed price contracts required by customers because they had no way of knowing when they negotiated contracts whether the advanced Class III or Class IV price would become the base Class I skim milk price. The record contains no similar evidence that HTST processors face the same constraints. In fact, record evidence shows advanced Class I pricing with monthly sales negotiations was, and remains, standard practice for these products.

Given all the record evidence, this decision must determine the best method for determining Class I skim milk prices that ensure adequate fluid milk supplies and orderly marketing conditions. The earlier discussion of record evidence clearly highlights the disorderly marketing conditions that occurred as a result of the average-of mover. However, when considering how to provide for more orderly marketing conditions, this decision cannot ignore how the Class I market has evolved since 2000.

Prior to FMMO Reform, fluid milk products were almost exclusively HTST, which have a shorter shelf-life and move from farm to retail in a relatively short time. Advanced pricing ensures equity among fluid milk handlers, allowing them to know their regulated minimum raw milk cost at the time they negotiate prices with their buyers and ensure equal raw milk cost between similarly situated handlers.

The record reflects significant development and growth of ESL products since Order Reform. The record also highlights marketing ESL products is significantly different than HTST products. Evidence shows the different distribution pattern (*warehouse* v. *DSD*) and longer shelf-life (65–120 days) facilitates wider geographic, rather than local, marketing and distribution. In addition, it is common for competing ESL products being sold in the same month to have been processed during a range of previous months. As a result, processors of ESL products do not necessarily have the same regulated minimum raw milk prices for products sold during the same month. This undermines handler equity between processors of ESL products as they do not have equal raw milk costs for products competing for sales in the same month. This decision supports a hybrid solution that will ensure adequate supplies of milk for fluid use, while also accounting for the inequities between processors of ESL products.

FMMOs are tasked with ensuring minimum prices reflect supply and demand conditions, which is accomplished, in part, through weekly surveys of wholesale bulk commodity products. Weekly survey prices provide signals to market participants on the changing value relationships between dairy product markets. FMMOs do not control those market-based relationships. As monthly average prices are determinants of Class III and IV prices, it is expected there will be periods when Class III values will be higher, and other times when Class IV values will be higher. Under a monthly pricing system that allows for voluntary pooling of manufactured milk and advanced Class I pricing, there will be occasions when these value differences are large enough to have price inversions and/or incentivize handlers to not pool milk during a particular month. The record clearly shows such situations occurred prior to May 2019. However, record data highlights the shift in duration and magnitude of these occurrences since the average-of mover was adopted. The record reveals large and prolonged value differences can cause significant differences in pay prices between producers and reduced willingness to supply the Class I market. The record of this proceeding supports returning to the higher-of Class I mover for HTST products. The higher-of would provide a better link between Class I and manufacturing prices and better ensure Class I prices remain the highest to bring forth an adequate supply of fluid milk. Therefore, this decision recommends adoption of Proposal 13 for HTST fluid milk products.

Returning to the higher-of mover for ESL products would deepen the pricing inequity that naturally exists for those products, as described earlier. For example, under the higher-of mover, a handler processing and selling an ESL product in January 2023 would have faced a base Class I skim milk price of $11.62 per cwt. However, handlers who processed ESL products two or four months before, which are also being sold in January 2023, would have faced a base Class I skim milk price of $12.61 and $13.82 per cwt, respectively. This results in a difference of base raw milk costs of up to $2.20 per cwt for ESL products competing for sales during January 2023.

Given the marketing characteristics of ESL products, short of providing for fixed minimum prices, price differences between these competing products will always exist. However, this decision strives to recognize the evolution of the ESL market since Order Reform with a pricing structure for ESL products that would narrow differences, make them more predictable, and provide for more orderly marketing conditions. This decision finds pricing differences would be reduced through adoption of a Class I ESL adjustment that would equate to a Class I price for all ESL products equal to the average-of mover contained in Proposal 15. The Class I ESL adjustment will provide more long-run pricing equity for ESL product by better ensuring handlers whose ESL products compete for sales during the same month, but whose raw milk may have been purchased and processed during different time periods, have more similar costs.

In practice, the higher-of Class I mover would be announced on or before the 23rd of the prior month. A Class I ESL adjustment would be announced at the same time, and equal the difference between the higher-of mover and the average-of the advanced Class III and Class IV skim pricing factors plus a rolling monthly adjuster. The rolling monthly adjuster would be calculated as the average of the differences between the higher-of and the average-of calculations for the prior 13 to 36 months. All milk used in ESL products with a shelf-life no less than 60 days, regardless of the type of Class I plant [4] in which they are made, would be subject to the adjustment. The adjustment would be added to or subtracted from the handler's pool obligation applicable to the amount of milk used in ESL products. The rolling adjuster would be computed in advance and announced on or before the 23rd of the month 12 months in advance of its application (*i.e.* January 2023 rolling

[4] 1xxx.7(a) or 1xxx.7(b).

adjuster would have been announced on or before December 23, 2021).

For example, the advanced Class III and IV skim pricing factors for January 2023 were $9.54 per cwt and $11.62 per cwt, respectively.

- The average-of the two factors (applicable to ESL milk) would have been $10.58 plus the rolling adjuster reflecting the average of the differences between the higher-of and the average-of from January 2020 to December 2021 ($1.58 per cwt), for a total of $12.16 per cwt.
- The higher-of mover (applicable to HTST milk) would have been $11.62 per cwt.
- The January 2023 Class I ESL adjustment would have been $0.54 ($12.16 − $11.62), calculated by subtracting the higher-of announced price from the average plus rolling average calculation.

The effect of the adjustment would be a base Class I skim price for HTST milk of $11.62, and an effective base Class I skim milk price for ESL milk of $12.16. While this example computes a positive adjustment resulting in a higher effective price for ESL milk, it is to be expected in some months the adjustment will be negative, resulting in a lower effective price. The objective of the ESL adjustment is not to create a higher or lower effective Class I price, but rather to reduce the range of base Class I skim prices paid for milk used in ESL products being sold during a month. Evidence on the record indicates the Class I ESL adjustment will tend to moderate the price highs and lows, thus providing improved price equity between handlers of ESL products. The record indicates ESL products represent approximately 8 to 10 percent of the Class I market and would be subject to the Class I ESL adjustment.

This decision finds the Class I ESL adjustment, combined with the higher-of mover price for HTST products will provide for more orderly marketing and better ensure price equity for handlers of similar Class I products.

This decision also recommends maintaining advanced Class I pricing. Proponents of Proposals 16, 17, and 18 argued advanced pricing should be eliminated to prevent short term inversions between the monthly Class I price and Class III and/or IV prices, and subsequent incentives for depooling. Opponents, both independent and cooperative Class I processors along with a majority of producers, supported the continued use of advanced pricing. As discussed previously, advanced Class I pricing provides equity to regulated Class I processors by informing them of their regulated minimum raw milk cost in advance of the sale of their product. This ensures all dairy processors have an opportunity to align their raw milk costs with the sale prices of their products, which are generally negotiated before the start of the month. In the case of Class I products and the nonfat solids portion of Class II products, this alignment is facilitated by advanced pricing. Accordingly, Proposals 16, 17, and 18 are denied.

Select argued USDA should omit a recommended decision on the Class I mover following a finding by the Secretary ''on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.'' (Select Post Hearing Brief, 2024, pp. 46–47) (citing 7 CFR 900.12(d)). The Secretary finds no sufficient information on the record to determine that skipping the recommended decision is unavoidable and is therefore issuing a recommended decision on the Class I mover.

Class I and Class II Differentials

a. Class I Differentials

The current Class I price structure was developed during the Order Reform process when Congress directed the Department to review the Class I price structure as part of larger FMMO consolidation efforts. Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 110 Stat. 888. The Department considered several objectives when determining an appropriate Class I price surface, including: being national in scope, while also accounting for local and regional conditions; recognizing the location value of milk; recognizing all uses of milk; and meeting AMAA requirements. The Department met AMAA requirements governing classified pricing by ensuring the price surface would ''reflect enough of the milk value to maintain sufficient revenue for producers to maintain an adequate supply of milk and provide equity to handlers with regards to raw product costs.'' 64 FR 16026, 16109 (Apr. 2, 1999) [5] The Class I price surface adopted on January 1, 2000, met those objectives.

Class I milk pricing consists of two pieces: the base Class I mover applied uniformly to all Class I milk (as discussed previously) and a location specific differential which represents the location value of milk at a specific plant location. The differentials provide producers a financial incentive to supply the Class I market, which tends to be closer to the population centers, rather than delivering milk to a manufacturing plant typically closer to the farm. The location specific differential consists of two parts: a base value (also referred to as the ''base differential'') applied uniformly to all Class I milk, and a location value.

The base differential is currently $1.60 per cwt, representing three costs whose values were determined to reflect market conditions during the late 1990s. First, the cost of maintaining Grade A farm status ($0.40) which includes costs associated with the labor, resources and utility expenses for maintaining required equipment and facilities, and adherence to certain management practices. Second, marketing costs (also referred to as balancing costs) ($0.60) which include, among other things, the costs associated with seasonal and daily reserve balancing of milk supplies and transportation to more distant processing plants. Lastly, a competitive factor ($0.60) is included to represent a portion of the competitive costs incurred by fluid plants to compete with manufacturing plants for a milk supply.

The location values were developed during the Order Reform process through an analysis conducted with the USDSS, maintained at the time by Cornell University. The USDSS was used to evaluate the geographic or ''spatial'' value of milk and milk components across the U.S. under the assumption of efficient markets. The model used 240 supply locations, 334 consumption locations, 622 dairy processing plant locations, 5 product groups, 2 milk components, and transportation and distribution costs among all locations to determine mathematically consistent location values for milk and components. Model results provided county specific information regarding the relationship of prices between geographic locations based on May and October 1995 data.

Since adoption on January 1, 2000, only differentials in the Appalachian, Florida, and Southeast FMMOs have been amended. The amendments, effective May 1, 2008, were the result of a region-specific rulemaking evaluating transportation costs in servicing those milk deficit orders. 73 FR 14153 (Mar. 17, 2008).

The record reflects consensus among hearing participants that the dairy marketplace has evolved significantly over the past 25 years. However, there remains strong disagreement on how the market changes should be interpreted and recognized in the Class I differentials. The producer community argued Class I differentials no longer reflect the cost of servicing fluid milk

[5] Order Reform Final Decision.

demand and should be updated to reflect the current structure and significantly higher transportation costs through adoption of Proposal 19. The processing and manufacturing community argued certain cost factors contained in the differentials are no longer relevant and should be eliminated through adoption of Proposal 20. They stressed that if the costs of servicing the Class I market exceed those of the proposed reduced Class I differential values, they can be negotiated between buyers and sellers through over-order premiums.

Proposal 19 would increase the Class I differentials based in part on updated USDSS results reflecting the current dairy market structure and transportation costs. NMPF witnesses explained USDSS result averages were the foundation of their deliberations, and deviations were made to account for a variety of factors they believed were not accounted for, including producer price impacts, competitive relationships, blend price alignment, private supply arrangements, and unique local market conditions such as traffic or geography. Although NMPF began with results from a mathematical model, the process thereafter was primarily subjective. They started by selecting a series of cities, which they called ''anchor cities,'' to represent areas which bordered multiple FMMO regions. Then, regional committees adjusted model-derived location values to better align location values and reflect local marketing and transportation conditions within their region, respecting the anchor cities as starting points. NMPF combined the independently derived regional results and made further refinements to ensure smooth pricing transitions between the regions. Ultimately, NMPF proposed that the lowest differential increase from $1.60 per cwt to $2.20 per cwt. NMPF maintains the cost factors provided for in the base differential value remain relevant and presented testimony from member cooperatives that such costs have increased.

Opposition to Proposal 19 centered on several areas. First, opponents argued there is more than an adequate supply of milk nationally to meet Class I needs, therefore adoption of Proposal 19, or any increase to Class I differentials, is not warranted. Second, opponents contended raising Class I prices would be disorderly because it would further decrease already declining Class I consumption and, they argued, the FMMO objective of ensuring adequate milk supplies implies FMMOs should adopt provisions that encourage Class I consumption. One such opponent presented an econometric study which found fluid milk demand is elastic, concluding that increasing Class I prices would decrease consumption and violate FMMO objectives. Third, opponents took exception to NMPF's proposal development process and what they considered a lack of unifying principles used to adjust the USDSS results, believing NMPF had failed to provide cost justification for maintaining a base differential. Independent fluid milk processors further argued the entire development process led to results with a favorable bias towards NMPF member-owned plants. Lastly, organic milk processors and some organic cooperatives argued organic milk should not be treated similarly to conventional milk in the FMMO program because it has different and unrelated market structures. In its post-hearing brief, MIG reiterated its position on organic milk and further argued that because NMPF did not demonstrate current Class I differentials create disorderly marketing conditions the evidentiary threshold for increasing differentials had not been met.

MIG offered Proposal 20, which would lower the base differential value to $0.00, contending FMMO Class I prices are too high and have resulted in an oversupply of milk that they believe is disorderly. According to MIG, there is more than an adequate supply of milk to meet fluid demand. Given 99 percent of U.S. milk production meets Grade A standards, MIG argued compensation for Grade A maintenance is already provided for in manufacturing milk prices and therefore the $0.40 Grade A factor is no longer justified.

Additionally, MIG members' testimony detailed efforts they have adopted to balance their own milk supply, including infrastructure investments, creating more uniform receiving and processing schedules, and paying over-order premiums. Organic and ESL MIG members testified their fluid milk products function as wholly distinct markets with their own balancing and supply challenges. Therefore, MIG concluded the balancing cost and Class I competitive factors should no longer be recognized in the Class I price. Lastly, MIG and its members argued that if additional money is needed to compensate dairy farmers and cooperatives for balancing costs or to incentivize milk to serve Class I plants, those costs should be negotiated between the buyer and seller and paid through over-order premiums, not as part of the regulated price.

A vast majority of producers and their cooperatives opposed Proposal 20. They maintained, both in witness testimony and post-hearing briefs, there is relevancy of costs associated with the base differential. NMPF stressed the costs, while difficult to precisely quantify, are still relevant and have increased since adopted in 2000. NMPF described the disorder that would arise if the base differential was reduced to $0.00 and a greater portion of market-wide cost reimbursement was forced to be negotiated in the market. While some NMPF members testified to receiving over-order premiums, they stressed establishing and maintaining premiums is difficult because there remains a market imbalance of power between milk sellers and buyers.

Opponents of any change to Class I prices, either through a change to Class I differentials or other FMMO amendments, raised several overarching objections. First, they alleged disorderly marketing must first be proven to justify any changes to FMMO provisions. They cited a lack of instances of fluid demand not being met as an indication disorder is not present in the fluid milk market.

The declared policy of the AMAA is to ''. . . establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce. . . .'' FMMOs accomplish this mandate through the classified pricing of milk products and marketwide pooling of those classified use values. Through these mechanisms, orderly marketing conditions are provided so handlers are assured of uniform minimum raw milk costs and producers receive minimum uniform payments for their raw milk, regardless of its use. While previous FMMO amendatory proceedings may have found market disorder to warrant changes to provisions, the AMAA does not contain an express or implied declaration that a finding of disorderly marketing conditions is required before an order can be amended. Second, opponents argued Class I prices cannot be amended until the FMMO system is modified to recognize the organic milk sector. However, potential amendments that would adopt disparate treatment of organic milk were not within the scope of this proceeding, as defined in the hearing notice.

Third, Class I processors and manufacturers argued the Department should consider the impact to Class I sales when evaluating changes as they allege the AMAA objective of ensuring adequate milk supplies implies the FMMO should encourage fluid consumption. They further argue that demand for fluid milk is elastic and, therefore, raising Class I differentials would be disorderly as it would result in a decline in Class I sales. The AMAA

authorizes FMMOs to provide for orderly marketing conditions and ensure an adequate supply of milk for fluid use. It does not explicitly state nor imply FMMO provisions should encourage Class I sales. FMMOs are charged with ensuring adequate supplies of fluid milk, regardless of the quantity demanded.

As to whether or not fluid milk has an inelastic or elastic demand, numerous studies were entered into the record, some drawing opposite conclusions. An econometric study entered on behalf of MIG found the retail level demand for fluid milk to be elastic. The study looked at cross sectional data over relatively short periods of time. In contrast, an NMPF witness reviewed numerous studies published within the last 20 years that evaluated time series data, concluding the studies support the assertion that fluid milk demand remains inelastic with respect to prices for those products. An analysis of the MIG study indicates that other than product prices and quantities, no other variables were considered that could explain changes in demand. Such variables which are generally recognized to be determinants of demand outside of price include, but are not limited to, household income, demographics, and measures of preferences. While the MIG study found retail price affects retail milk demand, it did not demonstrate price was the only factor that impacts demand. By design, the study estimated that only prices for milk and competing products could account for changes in quantities sold. Certainly, more study may be warranted given the evolution of the dairy industry in the last 25 years. However, a conclusion of the long-term demand elasticity of fluid milk cannot be drawn from one study of cross-sectional data, given the overwhelming body of studies contained in this hearing record which found otherwise.

Finally, opponents opined that milk is typically more valuable when used in Class III products, rather than Class I, and therefore the record lacks justification to increase Class I differentials. Testimony was given comparing USDSS model results (utilizing 2016 data) showing, outside of the southeastern region, higher marginal location values for milk used at Class III manufacturing locations than for milk used in Class I processing in the same locations. No evidence was presented as to how the Class III location values could or should be implemented to achieve the purposes of the AMAA. Unlike estimated Class I location values which have been historically relied upon to determine Class I differentials, this was the first time the USDSS model results were utilized to calculate location values for Class III milk, and the first time testimony was offered to suggest how the correlation between Class III and Class I location values should impact pricing decisions. The record lacks evidence to validate the interpretation of Class III location values, as further indicated by the differing views of the study authors as to whether this would be an appropriate interpretation of the various sets of USDSS results.

The record of this proceeding indicates the cost of servicing the Class I market is no longer sufficiently reflected by existing Class I differentials. This was evident in the USDSS results and validated through firsthand testimony of cooperative milk suppliers who described increased servicing costs. Current Class I differentials were established based on 1995 data. In the nearly thirty years since, the record reflects the market has substantially changed in size and structure. While milk production has increased approximately 45 percent from 1995 until 2022, during the same time period the number of dairy farms has decreased by approximately 74 percent, and the average herd size has increased from 68 to 261 cows.

Consolidation has also occurred on the processing and manufacturing side. The record describes plant closures, particularly on the fluid processing side, and plant investment, especially in large manufacturing plants. Considerable testimony and evidence were given describing increased distances milk must travel to find a market outlet. Because of the greater distances between supply locations and fluid processing plants, cooperative witnesses testified to increasing costs to ensure fluid demand is met. The witnesses also described in detail how the increasing costs are disproportionately borne by cooperative members who often see deductions on their milk checks to cover increased organizational and individual transportation costs, which some witnesses attested more than doubled in the past 20 years.

There was little to no rebuttal to the claim the market has consolidated on both the producer and processor side, resulting in increased transportation costs. The USDSS study authors themselves attributed the observed differences in the 2022 results, when compared to the current differentials, to four primary factors: change in milk production locations, change in compositions of dairy product demand, change in demand locations, and increased transportation costs per mile. What is at issue is the justification for increasing Class I differentials. While only one witness described a situation in which they were unable to procure enough milk to meet the demand of their fluid milk processor, the record is full of testimony on the difficulty cooperatives have faced to ensure fluid milk demand is met. Cooperative witnesses discussed needing to reach out to more distant supply locations to find available milk supplies willing to serve the Class I market instead of remaining at a manufacturing plant, and the inability to recoup a large portion of the additional transportation costs through over-order premiums.

FMMOs were established in the 1930s when the market contained many sellers and few buyers of milk. The highly perishable nature of raw milk resulted in producers engaging in pricing behavior that lowered farm prices as producers undercut one another in order to find a market outlet, a condition generally described as destructive competition. This unavoidable competitive behavior was among the reasons producers petitioned Congress to authorize a marketing order program to provide orderly marketing through known terms of trade and the pooling of market returns, which in turn provided a more equitable balance of power between buyers and sellers.

While the record of this proceeding reveals continued consolidation on both the producer and processing sides of the market, it also contains evidence the fundamental elements that were the genesis of the FMMO program still exist. Raw milk remains a highly perishable product, produced every day, that cannot be stored for any significant length of time and incurs high costs when transported over long distances. No substantive evidence was presented to indicate there is no longer an imbalance of market power between buyers and sellers. Processors spoke of the abundance of milk produced as a reason Class I prices should not be increased. However, that reality also highlights how the dairy marketplace continues to place processors in a price setting role. As a price taker, the record reflects considerable testimony attesting to the difficulty dairy farmers have had and continue to have in obtaining and maintaining over-order premiums at levels sufficient to cover actual and/or opportunity costs.

It is natural for buyers of milk to want to pay less and for sellers of milk to want to be paid more. The role of FMMOs is to determine minimum prices that provide for orderly marketing conditions that balance these natural competitive desires. The AMAA

expressly authorizes marketwide pooling of classified prices as a tool for accomplishing orderly marketing. In determining appropriate classified prices, the Department cannot place an undue reliance on over-order premiums which diminish the role of marketwide revenue pooling and can lead to disorderly marketing conditions. Accordingly, this decision recommends changes to the Class I differentials to better reflect the various aspects of the current marketplace.

The first step in evaluating appropriate Class I differential levels is the base differential. While the USDSS model is appropriate to show the value differences of milk between two fluid plant locations, as will be discussed later, it is not designed to inform the level of the minimum value needed to service Class I plants. Proposal 20 seeks to reduce the base differential to $0.00 on the premise the costs represented either are no longer relevant (Grade A maintenance) or should be left up to negotiation with the fluid milk processor and their supplier (balancing and Class I incentive cost). While the record does not precisely describe how much the cost components of the base differential have increased, it lacks evidence to demonstrate those costs have decreased. In fact, discussion of various costs throughout the proceeding indicates that costs have instead increased. Given the lack of clear record evidence specific to costs accounted for in the base differential, this decision recommends continuation of the $1.60 base differential.

Despite arguments Grade A maintenance costs should no longer be covered because 99 percent of U.S. milk production is Grade A, this decision continues to find it appropriate to recognize the additional costs for maintaining Grade A status in a regulatory pricing system requiring Grade A standards be met for participation. When the Grade A factor was incorporated into the base differential, it was specifically for Grade A maintenance costs, not costs associated with conversion to Grade A status. Proponents argue that because almost all milk meets Grade A standards, it is no longer necessary to provide a recognition of that cost in the base differential. Whether 99 percent of milk production today is Grade A, or 96 percent as it was at the time of Order Reform, is irrelevant. The record demonstrates dairy producers incur costs to maintain Grade A standards which are a requirement for participating in the FMMO system. As only Class I milk is required to participate and raw milk used in fluid milk products is required to meet Grade A standards, it is appropriate for the Class I price to continue to recognize those costs.

The record does not demonstrate the remaining two base differential factors, balancing costs and additional monies needed to compete for a milk supply, are no longer relevant. All parties testified to their continued existence. Proposal 20 would require those costs to be negotiated in the market.

Proponents of Proposal 20 argued they have made capital investments to balance their supply and/or pay over-order premiums to their suppliers to meet their milk needs, and/or provide balancing services. While their testimony acknowledges these costs exist, proponents argued the FMMO is making them pay twice for such services—once through the regulated price and again through their negotiated over-order premium. They further argued that if cost reimbursement is needed for such services, they should be able to pay that value to their suppliers directly through over-order premiums, not into the marketwide pool.

Cooperative witnesses testified at length on the costs associated with ensuring daily, weekly, monthly, and seasonal fluctuating needs of the fluid market are met. While their balancing costs were considered confidential information, cooperative witnesses testified to the overall increase in costs associated with providing those services. In particular, cooperative witnesses spoke to the higher costs incurred to operate regional balancing plants. These plants often do not run at full capacity year-round in order to ensure capacity to balance excess supply during flush periods or provide additional milk to fluid processing plants during months of increased demand. The record reflects these marketing costs are incurred for the benefit of balancing the entire market's milk supplies, thus providing for the orderly marketing of milk for fluid use. It has always been the case that an individual processor may find it necessary and/or advantageous to pay premiums above the minimum value to suit their individual and fluctuating needs. FMMO pricing balances the value needed to be reflected in the minimum regulated prices, without an over-reliance on over-order premiums that can undermine marketwide revenue pooling and lead to unequal raw product costs between similarly situated handlers and non-uniform payments to producers.

An additional function of the base differential, as described in the Order Reform Recommended Decision, is to generate the additional monies necessary for the FMMO pools to balance the reliance on over-order premiums. This was of particular concern in marketing orders with low Class I differentials and low Class I utilization, for which the decision noted ''there is a risk that handlers may not face equal raw product costs for various reasons. Thus, having a larger proportion of the actual value of Class I milk in the market order pool in these areas, than is now the case, should promote pricing equity among market participants.'' 63 FR 4802, 4909 (Jan. 30, 1998). As this decision seeks to update Class I differentials, maintaining the balance of what proportion of the value of Class I should be reflected in the marketwide pool remains a consideration. Negotiations for over-order premiums are not conducted in a vacuum, but are done with the benefit of both parties knowing minimum FMMO values and the costs represented in the minimum values the plant is responsible for paying. If Class I processors believe they are being double charged, they can use that information in their over-order premium negotiations.

Maintaining the $1.60 base differential would ensure Class I prices typically remain the highest, which is of particular importance in locations where the base differential is the effective differential. Without a base differential value in these locations, there would be little difference between the Class I price and the manufacturing price, and thus no financial incentive to serve the fluid market would exist to ensure the FMMO policy objective is met. Accordingly, this decision finds a $1.60 base differential remains an appropriate minimum value to ensure Class I demand is met.

While the Department appreciates the effort put forth to submit a comprehensive option in Proposal 19, the record of this proceeding does not support its adoption. Proposal 19 contains a base differential of $2.20, which is an increase of $0.60 from the current level. However, the record lacks data to quantify costs in excess of the $1.60 base value.

Proponents described using the average of the USDSS May and October results as a starting point for consideration but did not provide evidence as to why, under a minimum pricing system, the average rather than the minimum values observed in the May results was appropriate or preferable. Furthermore, the record does not contain evidence to support how the deviations made from the USDSS averages are appropriate. Proponents

described their own marketing expertise but presented insufficient evidence to determine if the proposed differentials would result in Class I prices in excess of what is appropriate for a minimum pricing system. Accordingly, this decision does not recommend adoption of Proposal 19.

However, this decision finds evidence to support raising the Class I differentials from the current levels. The record of this proceeding reveals the cost of servicing the Class I market has increased since the Class I differentials were adopted in 2000 and amended in the southeastern FMMOs in 2008. Evidence reflects the market structure of Class I plants and the milk supply have changed considerably in the last 25 years. That was supported in witness testimony, as well as USDSS model results, which clearly show the location value of milk has changed. The Department continues to find the USDSS model the best available tool for determining the location value of milk given the vast array of factors that contribute to how milk is produced, transported, processed, and distributed in the U.S.

When the differentials were adopted during Order Reform, testimony reflects the Department used USDSS model results as a starting point and made adjustments for various reasons. The Order Reform Recommended Decision described several options the Department considered. Of the differential surface ultimately adopted, AMS wrote, ''Nine differential zones provide the basis for establishing the price structure. These zones were established based on results of the USDSS model, knowledge of current supply and demand conditions, and recognition of other marketing conditions such as fluid versus manufacturing markets, urban versus rural areas, and surplus versus deficit markets.'' 63 FR 4802, 4905 (Jan. 30, 1998). The decision went on to outline additional reasons for adjustments including ensuring price alignment with neighboring zones and adequate marketwide pool draws.

The USDSS model estimates results for an efficient milk supply and distribution network, provided at its lowest cost. The USDSS study authors acknowledged when using the model results to determine Class I differentials, adjustments would be appropriate as there are factors unaccounted for in the model, such as FMMO provisions, abnormal traffic patterns, and competitive relationships.

Accordingly, this decision recommends Class I differentials be changed to better reflect the current cost of serving the Class I market. When determining appropriate levels, the Department began with the USDSS May results, referred to hereinafter as ''May results.'' The May results are the lower of the two months provided in evidence, which is an appropriate starting point for determining minimum prices. The Department then evaluated the results on a regional basis and made adjustments based on three principles and two additional considerations.

First, adjustments were made where necessary to better align Class I handler equity. This means the proposed Class I differentials should not give one handler an uneconomic cost advantage relative to an actual or potential competing handler. Second, adjustments were made to maintain producer equity and prevent uneconomic rewards or penalties to producers who deliver or could deliver milk to the same plant or market. Third, adjustments were made to ensure the marketwide pools continue to provide orderly marketing conditions. The combination of handler and producer equity goals is further achieved through the size and shape of pricing zones. The USDSS values are determined at specific locations, or ''nodes,'' in the model. Model results can be displayed on a map or in a list of counties to convey the price surface, but the methodology for doing so, as explained by the study authors, was a mathematical tool which interpolated values between distances. Additional information about markets can be added to the model results through knowledge about the economic or geographic (roads, natural barriers, etc.) conditions in specific locations. This may lead to a decision to change the shape or contours of the pricing surface that is estimated from the model results. Lastly, adjustments were made to reflect unique challenges associated with servicing dense urban environments. The changes by regions are described below.

The general process began with roughly $0.20 differential bands generated from the May results. The May and October results formed a soft boundary for differential adjustments. The current differentials formed a hard lower boundary, which were rounded to the nearest dime to eliminate $0.05 differences between zones, consistent with the USDSS model results which were in $0.10 increments.

Northeast

The recommended differentials in the Northeast region largely follow the May results with minimal changes. The differential for Portland, Maine, was raised to $4.50 to match the results in Concord, New Hampshire, to ensure handler equity. Albany County, New York, and Rensselaer County, New York, were moved to the same differential by increasing the Albany differential $0.10 to meet the Rensselaer differential, as plants in those counties are located just across a bridge from one another but were assigned different prices by the model. Differentials in most New Jersey counties are proposed to be $0.10 to $0.20 above the May results, but within the May and October range, to reflect testimony on the cost of servicing urban areas and transportation concerns. The differential for Washington, DC, is also proposed to be $0.10 above the May result to reflect testimony on servicing an urban area.

Appalachian

The variation between the model results in May and October are more significant in the three southeastern orders. As discussed by several witnesses, this region experiences unique marketing conditions with high Class I utilization and deficit local milk supply. Due to the substantial seasonality of the local milk supply, it requires significant but variable volumes of supplemental milk supplies from outside the region as well as changes in milk movements of regular suppliers to the market throughout the year. The Transportation Credit Balancing Fund (TCBF) and the recently implemented Distributing Plant Delivery Credit (DPDC) are programs to compensate handlers for some of the additional and variable transportation costs associated with supplying the Class I markets in these orders during different periods of the year. The reimbursement rates for these programs include adjustments for any gain in Class I differentials from supply point to receiving plant. Therefore, any changes in difference in Class I differentials would be reflected in the calculated rate for eligible payments in both the TCBF and DPDC in all three southeastern orders.

The recommended differentials in the Appalachian region are largely formed in $0.20 and $0.30 bands based on the May results starting with $3.70 in Southern Indiana and, moving southeast, increasing to $6.00 along the Carolina coast. In most areas, the proposed differentials are within $0.10 (+/−) of the May results. There are a few exceptions where the proposed differentials are $0.20 less than the May results to better align handler equity. For example, in Spartanburg County, South Carolina, the proposed differential is $5.60, $0.20 less than the

May results. This maintains the current competitive relationship between this area and the Atlanta, Georgia area, and with the competing handlers in North Carolina.

Southeast

The proposed differentials in the Southeast FMMO start at $3.20 in southwest Missouri and increase moving southeast to $6.00 in southeast Georgia. The proposed differentials follow the May results closely, within $0.10 (+/−), with a few modifications. The East Baton Rouge Parish differential was reduced by $0.20 from the May results to be consistent with the May result of $5.20 for competing areas such as Lafayette Parish. Tangipahoa Parish was placed in the $5.40 zone, or $0.30 below the May result. These decreases are meant to ensure handler equity while still acknowledging the thinner and steeper surface reflected in the May results in the southeastern U.S.

Rutherford County, Tennessee, is also proposed to be modified to be consistent with neighboring Davidson County, Tennessee, at $4.60 ($0.20 below the May result) to provide for handler equity. In Missouri, Webster County was placed in the $3.20 zone to match the Greene, Hickory, and Polk County differentials. This addresses handler equity concerns and results in a $0.10 proposed decrease for Webster County from the May result.

Florida

The proposed differentials for Florida largely follow the May results with modification to address handler equity concerns. The differentials start at $6.00 in the Florida panhandle region and increase going south with mostly $0.40 bands ending at $7.40 in south Florida. Processing plants in central Florida were placed in the same $6.80 band to match the May result in Volusia County due to handler equity concerns. This necessitated decreases from the May results of $0.10 in Orange County, $0.10 in Hillsborough County, and $0.20 in Polk County. For similar handler equity concerns, Broward County is proposed to match the May result in Dade County of $7.40 in the southernmost part of Florida.

Upper Midwest

In the Upper Midwest region, deviations from the May results are proposed to ensure producer equity and ensure the marketwide pool provides for orderly marketing. The Upper Midwest FMMO is unique in its low Class I utilization, which creates challenges in setting a differential surface that sends the proper signals to producers supplying the Class I market while also ensuring producer equity and orderly marketing among producers supplying the region's plants. Estimates indicate a large differential range in the region would not result in equity between producers and could result in disorderly marketing. Therefore, the differential surface was flattened from the May results, in general, by raising the differentials in the western part of the region—in the eastern Dakotas and much of Minnesota—and lowering the differentials in the eastern part—in northern Illinois, southeastern Minnesota, and Wisconsin.

Differentials in five counties, Dakota, Hennepin, Ramsey, Scott, and Washington, in the Minneapolis/St. Paul metropolitan area of Minnesota, are raised $0.10 higher than neighboring counties to reflect higher costs of serving an urban area and incentivize Class I service relative to surrounding manufacturing plants. In addition, they are set at the same differential of $2.90 to promote handler equity among fluid processing plants in the metropolitan area. The new differential for these counties, except for Hennepin, are $0.10 to $0.20 above the May results. The differential for Hennepin, $0.30 above the May results, is set the same as its peer counties to ensure that handlers in this county are able to compete for available milk supplies on an equitable basis.

Differentials in the regions supplying the Chicago, Illinois, area are adjusted to ensure handler equity. Generally, the differentials in this area are set at $3.10 to $3.20. The record reflects bottling plants in eastern Iowa, northern Illinois, southeastern Wisconsin, northern Indiana, and southwest Michigan all compete for Class I sales into the Chicago area. Thus, Class I differentials in northern Illinois are lowered $0.20 and $0.10 in Kane and Winnebago counties, respectively, from the May results. Similarly, comparisons and adjustments were made to the May results to align with northern Indiana and southwest Michigan counties supplying the Chicago area.

Central

The proposed differentials in the Central FMMO start at $2.30 in western Colorado and increase moving east to $4.00 in southern Illinois. The proposal aligns the production area of northern Colorado with the large production areas of New Mexico, the Texas Panhandle, and southwest Kansas at $2.50. This required increasing the differential in Weld, Boulder, and Morgan counties of Colorado by $0.10 to $0.20 from the May model results. In order to encourage milk to service Class I demand, some counties in the greater Denver area, including Colorado Springs, are proposed at the May results of $2.70, while others are proposed to increase as much as $0.20 above the May results to provide for handler equity.

In southern Illinois, testimony reflects plants compete for sales within a similar distribution area. Therefore, counties were grouped into a $3.60 zone. This represents an increase of $0.10 for some plants, while others remained at the May result of $3.60. In Iowa, all counties with distributing plants are set at the May result of $2.70.

Douglas County, Nebraska, and Minnehaha County, South Dakota, proposed differentials are $2.70 and $2.60, an increase of $0.20 and $0.10, respectively, from the May results. These increases recognize handler equity both to the east with Polk County, Iowa, and to the north with Cass County, North Dakota.

In Kansas, the two counties with distributing plants, Reno and Sedgwick, are proposed to be $2.90, as they are neighboring counties, and the same differential levels would provide for handler equity. This increase also provides handler equity and price alignment with Oklahoma plants to the south.

In Oklahoma, Lincoln, Cleveland, and Grady counties are proposed at the same differential of $3.30. Lincoln and Cleveland counties are proposed at the May results, while this represents a $0.20 increase for Grady County. The $3.30 differential for these three counties provides for handler equity and price alignment both to the north in Kansas and the south in Texas.

Mideast

Differentials in the Mideast region were evaluated on a state-by-state basis. Michigan differentials are set at the May results, $3.00 in the upper peninsula and $3.30 in the lower peninsula, because there were no additional producer or handler equity issues to address. Indiana is divided into three differential zones moving north to south ($3.30, $3.60, and $3.70) which align with the May results. The differentials for Lake and Huntington counties are proposed to be lowered by $0.40 and $0.10, respectively, from the May results to provide handler equity in the northern Indiana zone. The differentials in Madison and Wayne counties are proposed to increase $0.10 and $0.20, respectively, from the May results to provide handler equity in the central Indiana zone of $3.60. Southern Indiana

counties are proposed at the May result of $3.70.

Proposed differentials in Ohio generally follow the May results within $0.10 (+/−) and zones were determined based on handler equity concerns. Moving northwest to southeast, proposed differential zones are $3.30, $3.60, $3.80, $4.00, and $4.30. The five differential zones align within a $0.10 (+/−) range of the May results. The exception is Cuyahoga County with a proposed $0.20 decrease from the May result to provide for hander equity with Wayne and Stark counties.

Proposed differentials in western Pennsylvania are generally consistent with the May results to provide for handler equity, either in a $3.90 or $4.00 zone. Butler, Fayette, Lawrence, and Mercer counties are proposed to be lowered by $0.10 from the May results to the $4.00 zone. West Virgina differentials range from $4.00 to $4.80, moving northwest to southeast, consistent with the May results as there were no additional producer and handler equity to address.

Southwest

The proposed differentials in the Southwest FMMO start at $2.30 in northwest New Mexico and increase moving southeast to $4.80 in southeast Texas. Bernalillo County, New Mexico, is proposed to increase $0.30 from the May result to provide for handler and producer equity with nearby manufacturing plants. Testimony reflects the Texas Panhandle and southeastern New Mexico regions contain mostly manufacturing plants and draw milk from the same supply region in the Panhandle. For producer equity concerns, these regions are proposed to be in a $2.50 zone. This matches the May results for the eastern New Mexico plant locations, necessitating a proposed increase of $0.10 to $0.30 in counties within the Panhandle region to reach a uniform $2.50 zone. In Lubbock County, Texas, the differential is proposed at $2.60, a decrease of $0.20 from the May result, recognizing handler equity in the Panhandle region and producer equity considerations with manufacturing plants competing for milk supplies. Dallas County, Texas, is proposed at the May result of $3.70 and a $0.10 increase is proposed for Tarrant County to maintain handler equity. Bexar County, Texas is proposed at $4.30, a $0.10 increase from the May result, and Harris and Montgomery counties are proposed at $4.80, a $0.20 increase from the May result to reflect difficulties in servicing congested urban areas.

Arizona

In Arizona, the metropolitan area of Phoenix encompasses both Maricopa and Pinal counties. The differentials for these counties are proposed to increase $0.30 and $0.20, respectively, above the May results to reflect the higher cost of servicing an urban area, in addition to providing handler equity with Clark County, Nevada. The differential for Yuma County is proposed at $2.50, an increase of $0.40 from the May result to maintain handler equity between Maricopa County, Arizona, and Los Angeles, California.

California

For California, testimony was given regarding additional transportation costs from excessive traffic congestion and geographic obstacles in southern California that were not accounted for in the model. Accordingly, the differential in San Diego is proposed to increase $0.20 from the May result to $2.80. To maintain handler equity within the southern California region, the differentials for Orange, Riverside, and Los Angeles counties are proposed to be $2.80. This is $0.40, $0.50 and $0.60 above the May results in Orange, Riverside, and Los Angeles counties, respectively. Ventura County is proposed to increase $0.40 from the May result, to $2.60, to address producer equity concerns and ensure price alignment with the surrounding counties. For Kern County, the primary milk supply area for much of this region, the differential is proposed to be $2.50. This also serves to encourage Kern County milk to move south to distributing plants, rather than north to manufacturing plants where the proposed differential is $2.20.

The differentials in the remaining San Joaquin Valley counties, Tulare, Kings, Fresno, Madera, Merced, Stanislaus, and San Joaquin, are proposed to be $2.20 based on testimony indicating these counties are considered one supply area. Of these counties, Madera County has the highest increase from the May result, $0.40, to maintain handler equity as well as maintain producer equity for the producer milk in this area.

The proposed $2.20 differential zone is then carried into the Sacramento Valley counties of Sacramento, Yolo, Colusa, and Glenn, an increase of $0.20 to $0.30 from the May results. These counties, along with those in the San Joaquin Valley, supply milk for distributing plants in the San Francisco Bay area. The proposed differentials for Alameda, Contra Costa, Solano, Napa, Marin, and Sonoma counties are set at $2.40 to encourage milk to service the San Francisco Bay area. This represents an increase of $0.40 to $0.50 from the May model results for these supply counties to maintain handler equity.

San Francisco and counties south along the central California coast are further from a milk supply. The differentials in that area are proposed at $2.50 and include San Francisco, San Mateo, Santa Cruz, Santa Clara, San Benito, Monterey, San Luis Obispo, and Santa Barbara counties, representing increases from the May results of $0.20 to $0.50.

Similar to the Sacramento Valley, the differentials for the counties of Mendocino, Lake, and Humboldt, which are located along the northeast California coast and supply the San Francisco Bay area, are proposed to be $2.20 to provide for producer equity.

Western Unregulated States

Differentials in Nevada generally follow the May results, except for a few modifications. In northern Nevada, to provide for handler equity, Washoe County is proposed to increase $0.10 from the May result to align with the neighboring $2.00 California zone. Eureka, Nye, and Esmerelda counties are proposed at $2.20, resulting in changes from the May results of plus or minus $0.10.

The proposed differentials in Utah start at $2.00 in the north and increase moving south up to $2.50 in the southwest part of the State. While most of the proposed differentials are aligned with the May results, the counties of Davis, Morgan, Salt Lake, Tooele, Utah, and Weber are recommended at $2.20, an increase of $0.10. This aligns those counties with counties to the north and west, ensuring both producer and handler equity.

The proposed differentials in the state of Montana start at $1.70 and increase to $2.40 in the southeast part of the state. Most of the proposed differentials are aligned with the May results. The only county with a proposed differential more than $0.10 different from the May result is Golden Valley which is lowered $0.20 to ensure handler equity with the counties to its north and south.

The proposed differentials in the unregulated portions of the state of Idaho start at $1.70 and increase to $2.20. While most of the proposed differentials are within $0.10 of the May results, the county of Cassia is decreased $0.20 for handler equity with plants to the south into Utah. This brings the unregulated Idaho counties in alignment with counties to the north and south, ensuring both producer and handler equity with those areas.

Lastly, the proposed differentials in Wyoming generally follow the May results as there were no producer or handler equity concerns to address. Except for Laramie, Wyoming, which is proposed at $2.50 to align with neighboring Northeast Colorado. This represents a $0.20 increase compared to the May results.

Pacific Northwest

In the Pacific Northwest, the proposed differential in Seattle was increased $0.30 above the May result to reflect unique geography and the cost of serving an urban market. Likewise, the proposed differential in Portland, Oregon, was increased from the May result to align with Seattle to provide for producer and handler equity. Testimony reflected both cities are equidistant to milk supplies in south central Washington, and both have similar supply issues. The remaining proposed differentials reflect a $0.20 banding around the May results.

Summary

In total, the differentials proposed by this decision reflect a simple average $0.01 higher than the USDSS model May results ($3.81 versus $3.80) for the 3,108 counties in the contiguous U.S.

The following is a general description of the changes from the USDSS model May results:

Number of counties	Range of difference	Number of plants
5	−$0.40 to −$0.60	1
224	−$0.20 to −$0.30	12
2,652	−$0.10 to +$0.10	172
190	+$0.20 to +$0.30	35
37	+$0.40 to $0.60	22

An analysis shows the proposed differentials, on a weighted average basis for FMMO Class I milk (2019–2023), increased $1.24/cwt. Based on pooled Class I milk during 2019–2023, the current weighted Class I differential was $2.63 per cwt. The proposed differentials would have increased the weighted average to $3.87 per cwt.

Other Issues

In post-hearing briefs, some stakeholders objected to NMPF's use of producer costs of production for proposing updated Class I differential levels. As described above, such costs were not considered in the development of the Class I differentials recommended in this decision.

Another argument made in post-hearing briefs centered on the amended TCBF provisions in the Appalachian and Southeast FMMOs and newly established DPDC provisions in the Appalachian, Florida, and Southeast FMMOs. These provisions became effective March 1, 2024, and were a result of a regional rulemaking proceeding to address the chronic milk supply issues of those regions. 89 FR 6401 (Feb. 1, 2024). As the proceeding resulted in increased transportation cost related assessments on Class I handlers, some stakeholders argue no changes should be made to the Class I differentials until the impact of these regional changes can be observed.

The Appalachian, Florida, and Southeast FMMOs adopted marketwide service payment provisions that authorize year-round assessments on Class I milk, paid by handlers, for payment to handlers for Class I deliveries made to their plants according to the TCBF and DPDC provisions. Under the marketwide service provisions of the AMAA, marketwide service programs are only authorized to pay monies to handlers. 7 U.S.C. 608c(5)(J). Therefore, it would not be appropriate to delay consideration of Class I differential levels, monies which are paid to producers (both cooperative and independent), for TCBF and DPDC payments which are made only to handlers. If Class I differential levels are changed as a result of this proceeding, thus impacting the market conditions which led to the creation of the marketwide service programs, stakeholders could petition USDA to make changes to the TCBF and DPDC provisions.

b. Class II Differential

The FMMO system currently prices milk used in Class II products uniformly. The Class II skim milk price is computed as the advanced Class IV skim price plus $0.70 per cwt. The Class II butterfat price is the Class III butterfat price for the month, plus the same amount expressed as $0.007 per pound. The $0.70 differential between the Class IV and Class II skim milk prices, adopted in the Order Reform Final Decision, was based on an estimate of the cost of drying condensed milk and re-wetting the solids for use in Class II products, which was seen as an economic, upper-bound constraint on the use of fresh milk in Class II processing.

Proposal 21, submitted by AFBF, seeks to update the Class II differential to $1.56 per cwt. AFBF derived the proposed level by updating the factors originally used to determine drying cost. Those include the NFDM make allowance and the nonfat solids yield factor used in the FMMO formulas, and butterfat and nonfat solids levels in FMMO pooled milk. As rewetting solids, the practice of first reconstituting powdered milk with water, is no longer a common practice, AFBF argued such cost no longer needs to be considered. AFBF opined a $1.56 Class II differential would not be high enough to incentivize the substitution of Class IV products for fresh milk. AFBF claimed the additional Class II value added to the marketwide pool because of the higher differential would reduce the occurrence of negative PPDs and depooling.

Opponents of Proposal 21 argued such a large Class II differential increase would incentivize the substitution of Class IV products in the manufacture of Class II products. Class I processors, who also have Class II production, argued such an increase would put them at a competitive disadvantage with standalone Class II manufacturers. They indicated processors who produce both products are required to pool all milk received at the plant but processors who only produce Class II products can opt to pool milk.

Record evidence does not support adoption of Proposal 21. Mathematically, the formula used by AFBF to compute an updated Class II differential mimics the calculation from Order Reform. However, it is clear from record testimony that more than doubling the current Class II differential, as proposed by AFBF,

would result in handler equity issues and increased substitution of Class IV products in lieu of fresh fluid milk in Class II products. Class II production is unusual, if not unique, among dairy processing facilities as some products are produced at Class I plants, and others at standalone Class II plants. Because all milk received at Class I plants is required to be pooled, regardless of use, this can result in the same products having different regulatory burdens depending on the type of plant where it was produced. That phenomenon has existed since 2000. However, the record shows that instances of milk in Class II products produced from Class II plants not being pooled could dramatically increase with adoption of Proposal 21. The result would be a competitive disadvantage for Class I plants by creating a pricing inequity that would produce disorderly marketing conditions. Accordingly, Proposal 21 is denied.

Conforming Changes

Proposal 22, authored by AMS, would authorize changes, where necessary, in the respective marketing orders to conform with any amendments resulting from this proceeding. The record contains no opposition to the proposal. Accordingly, this decision recommends a series of conforming changes to ensure the proposed amendments to the uniform pricing formulas applicable to the respective marketing orders can be effectuated. The proposed changes are as follows:

1. Amending 7 CFR 1000.43 to remove references to 1135.11, as the order is no longer in effect. Also adding 7 CFR 1000.43(e) which would define skim milk used in ultra-pasteurized or aseptically processed and packaged fluid milk products eligible for the Class I ESL adjustment be limited to available Class I producer milk classified pursuant to the allocation process contained in Section1000.44(a);

2. Amending 7 CFR 1000.50 to remove all references to NASS and replace them with AMS;

3. Amending the following counties (and FIPS code) in 7 CFR 1000.52, to be consistent with the Federal Information Procession Series maintained by the Federal Communication Commission: Yellowstone, MT (30113) has been merged into Gallatin and Park Counties, MT (30031) (30067), Shannon, SD (46113) has been renamed Oglala Lakota, SD (46102), Bedford City, VA (51515) has been merged into Bedford County, VA (51019), and Clifton Forge City, VA (51560) has been merged into Alleghany County, VA (51005). Additionally, amending the FIPS code for Pierce, WA (53053) as it was original printed incorrectly.

4. Amending 7 CFR 1000.76, provisions governing partially regulated distributing plants to add ''applicable'' to references to the Class I price throughout the section to indicate application of a Class I ESL adjustment, when applicable, and remove the reference in 7 CFR 1000.76(b)(1)(i) to 7 CFR 1135.11 as the latter is no longer in effect;

5. Amend the introductory paragraphs of 7 CFR 1001.60, 1005.60, 1006.60, 1007.60, 1030.60, 1032.60, 1033.60, 1051.60, 1124.60, 1126.60, and 1131.60, sections which calculate the handler's value of milk in each FMMO. Section .60 of each order would be revised with the addition of an instruction to compute an adjustment to a handler's producer milk obligation for Class I producer milk eligible for the Class I ESL adjustment. The adjustment would be calculated by multiplying the monthly Class I ESL adjustment by the monthly pounds of eligible Class I skim milk. The instruction would be inserted prior to the instruction regarding reconstituted milk for each order. Other paragraphs are proposed to be redesignated to reflect the insertion;

6. Further amending 7 CFR 1005.60(g), 1006.60(g)–(i), and 1007.60(g) to remove language pertaining to transportation cost reimbursement during the months of January 2005 through March 2005 and September 2017, which is no longer in effect; and

7. Amending 7 CFR 1005.51, 1006.51, and 1007.51 to remove Class I price adjustments in the Appalachian, Florida, and Southeast FMMOs. The order language would no longer be necessary with the proposed amendments to the Class I differentials.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings, and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings, conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the claims to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Northeast, Southeast, Appalachian, Florida, Upper Midwest, Central, Mideast, California, Southwest, Pacific Northwest, and Arizona FMMOs were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforenamed marketing agreements and orders:

a. The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

b. The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreements and the orders are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

c. The proposed marketing agreements and the orders will regulate the handling of milk in the same manner as and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing have been held.

d. All milk and milk products handled by handlers, as defined in the marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Recommended Marketing Agreements and Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following orders regulating the handling of milk in Northeast, Appalachian, Florida, Southeast, Upper Midwest, Central, Mideast, California, Pacific Northwest, Southwest, and Arizona marketing areas are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, and 1131

Milk marketing orders.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, and 1131 as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

■ 1. The authority citation for 7 CFR part 1000 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 2. Amend § 1000.43 by removing the words ''and § 1135.11 of this chapter'' from paragraph (a) and paragraph (b) introductory text and the words ''or § 1135.11 of this chapter'' from paragraph (b)(2) and by adding paragraph (e) to read as follows:

§ 1000.43 General classification rules.

* * * * *

(e) Any skim milk used in ultra-pasteurized or aseptically processed and packaged fluid milk products shall be allocated in combination with Class I milk and the quantity of producer milk eligible to be priced shall be limited to available Class I producer milk classified pursuant to § 1000.44(a).

■ 3. Revise and republish § 1000.50 to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the Agriculture Marketing Service (AMS) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (p) of this section shall be based on a weighted average for the preceding month of weekly prices announced by AMS on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52, plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section rounded to the nearest cent.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

(d) *Class II price.* The Class II price per hundredweight, rounded to the nearest cent, shall be .965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

(e) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be the advanced Class IV skim milk price computed in paragraph (q)(2) of this section plus 70 cents.

(f) *Class II nonfat solids price.* The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9.3.

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $0.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class III skim milk price plus 3.5 times the butterfat price.

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.30 plus the other solids price per pound times 6.00.

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class IV skim milk price plus 3.5 times the butterfat price.

(k) *Class IV skim milk price.* The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9.30.

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average AMS AA Butter survey price reported by the Department for the month, less 22.57 cents, with the result multiplied by 1.211.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average AMS nonfat dry milk survey price reported by the Department for the month, less 22.68 cents and multiplying the result by 0.99.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) The U.S. average AMS survey price for 40-lb. block cheese reported by the Department for the month;

(2) Subtract 25.04 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 25.04 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.589; and

(ii) Subtract 0.91 times the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.17.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average AMS dry whey survey price reported by the Department for the month minus 26.53 cents, with the result multiplied by 1.03.

(p) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight of milk shall be determined as follows:

(1) Multiply 0.0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

(2) Subtract the somatic cell count of the milk (reported in thousands) from 350; and

(3) Multiply the amount computed in paragraph (p)(1) of this section by the amount computed in paragraph (p)(2) of this section and round to the nearest full cent.

(q) *Advanced pricing factors.* For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the 2 most recent AMS U.S. average weekly survey prices announced before the 24th day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the 2 most recent AMS U.S. average weekly survey prices announced before the 24th

day of the month, compute a protein price and an other solids price;

(ii) Multiply the protein price computed in paragraph (q)(1)(i) of this section by 3.30;

(iii) Multiply the other solids price per pound computed in paragraph (q)(1)(i) of this section by 6.0; and

(iv) Add the amounts computed in paragraphs (q)(1)(ii) and (iii) of this section.

(2) An advanced Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (m) of this section, but using the weighted average of the 2 most recent AMS U.S. average weekly survey prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.30.

(3) An advanced butterfat price per pound rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average AMS AA Butter survey prices announced before the 24th day of the month, subtracting 22.57 cents from this average, and multiplying the result by 1.211.

(r) *Class I Extended Shelf Life (ESL) adjustment.* The Class I ESL adjustment, rounded to the nearest cent, shall be computed as follows:

(1) Compute the simple average of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section;

(2) Add the following:

(i) Determine the higher of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section, for each of the preceding 13 to 36 months;

(ii) Calculate the average of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section, for each of the preceding 13 to 36 months;

(iii) For each of the preceding 13 to 36 months, subtract the amount computed in paragraph (r)(2)(ii) of this section from the amount computed in paragraph (r)(2)(i) of this section; and

(iv) Compute the average of the differences computed in paragraph (r)(2)(iii) of this section.

(3) Subtract the higher of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section.

■ 4. Revise and republish § 1000.52 to read as follows:

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(b) and (c) shall be as follows:

County/parish/city	State	FIPS code	Class I differential adjusted for location
Autauga	AL	01001	5.80
Baldwin	AL	01003	5.80
Barbour	AL	01005	5.80
Bibb	AL	01007	5.60
Blount	AL	01009	5.40
Bullock	AL	01011	5.80
Butler	AL	01013	5.80
Calhoun	AL	01015	5.60
Chambers	AL	01017	5.60
Cherokee	AL	01019	5.40
Chilton	AL	01021	5.60
Choctaw	AL	01023	5.80
Clarke	AL	01025	5.80
Clay	AL	01027	5.60
Cleburne	AL	01029	5.60
Coffee	AL	01031	5.80
Colbert	AL	01033	4.90
Conecuh	AL	01035	5.80
Coosa	AL	01037	5.60
Covington	AL	01039	5.80
Crenshaw	AL	01041	5.80
Cullman	AL	01043	5.40
Dale	AL	01045	5.80
Dallas	AL	01047	5.80
DeKalb	AL	01049	5.40
Elmore	AL	01051	5.80
Escambia	AL	01053	5.80
Etowah	AL	01055	5.40
Fayette	AL	01057	5.40
Franklin	AL	01059	5.20
Geneva	AL	01061	5.80
Greene	AL	01063	5.60
Hale	AL	01065	5.60
Henry	AL	01067	5.80
Houston	AL	01069	5.80
Jackson	AL	01071	5.20
Jefferson	AL	01073	5.60
Lamar	AL	01075	5.40
Lauderdale	AL	01077	4.90
Lawrence	AL	01079	5.20
Lee	AL	01081	5.80
Limestone	AL	01083	5.20
Lowndes	AL	01085	5.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
Macon	AL	01087	5.80
Madison	AL	01089	5.20
Marengo	AL	01091	5.80
Marion	AL	01093	5.20
Marshall	AL	01095	5.40
Mobile	AL	01097	5.80
Monroe	AL	01099	5.80
Montgomery	AL	01101	5.80
Morgan	AL	01103	5.40
Perry	AL	01105	5.60
Pickens	AL	01107	5.40
Pike	AL	01109	5.80
Randolph	AL	01111	5.60
Russell	AL	01113	5.80
Shelby	AL	01117	5.60
St. Clair	AL	01115	5.60
Sumter	AL	01119	5.60
Talladega	AL	01121	5.60
Tallapoosa	AL	01123	5.60
Tuscaloosa	AL	01125	5.60
Walker	AL	01127	5.40
Washington	AL	01129	5.80
Wilcox	AL	01131	5.80
Winston	AL	01133	5.40
Arkansas	AR	05001	4.60
Ashley	AR	05003	4.90
Baxter	AR	05005	3.60
Benton	AR	05007	3.20
Boone	AR	05009	3.30
Bradley	AR	05011	4.60
Calhoun	AR	05013	4.60
Carroll	AR	05015	3.30
Chicot	AR	05017	4.90
Clark	AR	05019	4.00
Clay	AR	05021	4.30
Cleburne	AR	05023	4.00
Cleveland	AR	05025	4.60
Columbia	AR	05027	4.30
Conway	AR	05029	4.00
Craighead	AR	05031	4.30
Crawford	AR	05033	3.30
Crittenden	AR	05035	4.60
Cross	AR	05037	4.30
Dallas	AR	05039	4.30
Desha	AR	05041	4.90
Drew	AR	05043	4.60
Faulkner	AR	05045	4.00
Franklin	AR	05047	3.60
Fulton	AR	05049	4.00
Garland	AR	05051	4.00
Grant	AR	05053	4.30
Greene	AR	05055	4.30
Hempstead	AR	05057	4.00
Hot Spring	AR	05059	4.30
Howard	AR	05061	4.00
Independence	AR	05063	4.00
Izard	AR	05065	4.00
Jackson	AR	05067	4.30
Jefferson	AR	05069	4.60
Johnson	AR	05071	3.60
Lafayette	AR	05073	4.30
Lawrence	AR	05075	4.30
Lee	AR	05077	4.60
Lincoln	AR	05079	4.60
Little River	AR	05081	3.60
Logan	AR	05083	3.60
Lonoke	AR	05085	4.30
Madison	AR	05087	3.30
Marion	AR	05089	3.60
Miller	AR	05091	4.00
Mississippi	AR	05093	4.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
Monroe	AR	05095	4.60
Montgomery	AR	05097	4.00
Nevada	AR	05099	4.30
Newton	AR	05101	3.60
Ouachita	AR	05103	4.30
Perry	AR	05105	4.00
Phillips	AR	05107	4.60
Pike	AR	05109	4.00
Poinsett	AR	05111	4.30
Polk	AR	05113	3.60
Pope	AR	05115	3.60
Prairie	AR	05117	4.30
Pulaski	AR	05119	4.30
Randolph	AR	05121	4.00
Saline	AR	05125	4.30
Scott	AR	05127	3.60
Searcy	AR	05129	3.60
Sebastian	AR	05131	3.60
Sevier	AR	05133	3.60
Sharp	AR	05135	4.00
St. Francis	AR	05123	4.60
Stone	AR	05137	4.00
Union	AR	05139	4.60
Van Buren	AR	05141	4.00
Washington	AR	05143	3.30
White	AR	05145	4.30
Woodruff	AR	05147	4.30
Yell	AR	05149	3.60
Apache	AZ	04001	2.30
Cochise	AZ	04003	2.40
Coconino	AZ	04005	2.40
Gila	AZ	04007	2.40
Graham	AZ	04009	2.40
Greenlee	AZ	04011	2.40
La Paz	AZ	04012	2.50
Maricopa	AZ	04013	2.60
Mohave	AZ	04015	2.50
Navajo	AZ	04017	2.30
Pima	AZ	04019	2.40
Pinal	AZ	04021	2.60
Santa Cruz	AZ	04023	2.40
Yavapai	AZ	04025	2.40
Yuma	AZ	04027	2.50
Alameda	CA	06001	2.40
Alpine	CA	06003	1.80
Amador	CA	06005	1.80
Butte	CA	06007	2.00
Calaveras	CA	06009	1.80
Colusa	CA	06011	2.20
Contra Costa	CA	06013	2.40
Del Norte	CA	06015	2.20
El Dorado	CA	06017	1.80
Fresno	CA	06019	2.20
Glenn	CA	06021	2.20
Humboldt	CA	06023	2.20
Imperial	CA	06025	2.50
Inyo	CA	06027	2.20
Kern	CA	06029	2.50
Kings	CA	06031	2.20
Lake	CA	06033	2.20
Lassen	CA	06035	2.00
Los Angeles	CA	06037	2.80
Madera	CA	06039	2.20
Marin	CA	06041	2.40
Mariposa	CA	06043	1.80
Mendocino	CA	06045	2.20
Merced	CA	06047	2.20
Modoc	CA	06049	2.00
Mono	CA	06051	2.00
Monterey	CA	06053	2.50
Napa	CA	06055	2.40

County/parish/city	State	FIPS code	Class I differential adjusted for location
Nevada	CA	06057	2.00
Orange	CA	06059	2.80
Placer	CA	06061	2.00
Plumas	CA	06063	2.00
Riverside	CA	06065	2.80
Sacramento	CA	06067	2.20
San Benito	CA	06069	2.50
San Bernardino	CA	06071	2.60
San Diego	CA	06073	2.80
San Francisco	CA	06075	2.50
San Joaquin	CA	06077	2.20
San Luis Obispo	CA	06079	2.50
San Mateo	CA	06081	2.50
Santa Barbara	CA	06083	2.50
Santa Clara	CA	06085	2.50
Santa Cruz	CA	06087	2.50
Shasta	CA	06089	2.00
Sierra	CA	06091	2.00
Siskiyou	CA	06093	2.00
Solano	CA	06095	2.40
Sonoma	CA	06097	2.40
Stanislaus	CA	06099	2.20
Sutter	CA	06101	2.20
Tehama	CA	06103	2.20
Trinity	CA	06105	2.00
Tulare	CA	06107	2.20
Tuolumne	CA	06109	1.80
Ventura	CA	06111	2.60
Yolo	CA	06113	2.20
Yuba	CA	06115	2.00
Adams	CO	08001	2.70
Alamosa	CO	08003	2.50
Arapahoe	CO	08005	2.70
Archuleta	CO	08007	2.30
Baca	CO	08009	2.50
Bent	CO	08011	2.50
Boulder	CO	08013	2.50
Broomfield	CO	08014	2.50
Chaffee	CO	08015	2.50
Cheyenne	CO	08017	2.50
Clear Creek	CO	08019	2.50
Conejos	CO	08021	2.50
Costilla	CO	08023	2.50
Crowley	CO	08025	2.70
Custer	CO	08027	2.70
Delta	CO	08029	2.30
Denver	CO	08031	2.70
Dolores	CO	08033	2.30
Douglas	CO	08035	2.70
Eagle	CO	08037	2.50
El Paso	CO	08041	2.70
Elbert	CO	08039	2.70
Fremont	CO	08043	2.70
Garfield	CO	08045	2.30
Gilpin	CO	08047	2.50
Grand	CO	08049	2.50
Gunnison	CO	08051	2.50
Hinsdale	CO	08053	2.30
Huerfano	CO	08055	2.70
Jackson	CO	08057	2.50
Jefferson	CO	08059	2.70
Kiowa	CO	08061	2.50
Kit Carson	CO	08063	2.50
La Plata	CO	08067	2.30
Lake	CO	08065	2.50
Larimer	CO	08069	2.50
Las Animas	CO	08071	2.50
Lincoln	CO	08073	2.70
Logan	CO	08075	2.50
Mesa	CO	08077	2.30
Mineral	CO	08079	2.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
Moffat	CO	08081	2.30
Montezuma	CO	08083	2.30
Montrose	CO	08085	2.30
Morgan	CO	08087	2.50
Otero	CO	08089	2.70
Ouray	CO	08091	2.30
Park	CO	08093	2.70
Phillips	CO	08095	2.50
Pitkin	CO	08097	2.50
Prowers	CO	08099	2.50
Pueblo	CO	08101	2.70
Rio Blanco	CO	08103	2.30
Rio Grande	CO	08105	2.50
Routt	CO	08107	2.50
Saguache	CO	08109	2.50
San Juan	CO	08111	2.30
San Miguel	CO	08113	2.30
Sedgwick	CO	08115	2.50
Summit	CO	08117	2.50
Teller	CO	08119	2.70
Washington	CO	08121	2.50
Weld	CO	08123	2.50
Yuma	CO	08125	2.50
Fairfield	CT	09001	5.00
Hartford	CT	09003	4.80
Litchfield	CT	09005	4.80
Middlesex	CT	09007	4.80
New Haven	CT	09009	4.80
New London	CT	09011	4.80
Tolland	CT	09013	4.80
Windham	CT	09015	4.80
District of Columbia	DC	11001	4.70
Kent	DE	10001	4.60
New Castle	DE	10003	4.40
Sussex	DE	10005	4.80
Alachua	FL	12001	6.40
Baker	FL	12003	6.40
Bay	FL	12005	6.00
Bradford	FL	12007	6.40
Brevard	FL	12009	6.80
Broward	FL	12011	7.40
Calhoun	FL	12013	6.00
Charlotte	FL	12015	7.00
Citrus	FL	12017	6.80
Clay	FL	12019	6.40
Collier	FL	12021	7.40
Columbia	FL	12023	6.40
DeSoto	FL	12027	7.00
Dixie	FL	12029	6.40
Duval	FL	12031	6.40
Escambia	FL	12033	5.80
Flagler	FL	12035	6.80
Franklin	FL	12037	6.00
Gadsden	FL	12039	6.00
Gilchrist	FL	12041	6.40
Glades	FL	12043	7.00
Gulf	FL	12045	6.00
Hamilton	FL	12047	6.40
Hardee	FL	12049	7.00
Hendry	FL	12051	7.40
Hernando	FL	12053	6.80
Highlands	FL	12055	7.00
Hillsborough	FL	12057	6.80
Holmes	FL	12059	6.00
Indian River	FL	12061	7.00
Jackson	FL	12063	6.00
Jefferson	FL	12065	6.00
Lafayette	FL	12067	6.40
Lake	FL	12069	6.80
Lee	FL	12071	7.00
Leon	FL	12073	6.00

County/parish/city	State	FIPS code	Class I differential adjusted for location
Levy	FL	12075	6.40
Liberty	FL	12077	6.00
Madison	FL	12079	6.00
Manatee	FL	12081	7.00
Marion	FL	12083	6.80
Martin	FL	12085	7.00
Miami-Dade	FL	12086	7.40
Monroe	FL	12087	7.40
Nassau	FL	12089	6.40
Okaloosa	FL	12091	5.80
Okeechobee	FL	12093	7.00
Orange	FL	12095	6.80
Osceola	FL	12097	6.80
Palm Beach	FL	12099	7.40
Pasco	FL	12101	6.80
Pinellas	FL	12103	6.80
Polk	FL	12105	6.80
Putnam	FL	12107	6.40
Santa Rosa	FL	12113	5.80
Sarasota	FL	12115	7.00
Seminole	FL	12117	6.80
St. Johns	FL	12109	6.40
St. Lucie	FL	12111	7.00
Sumter	FL	12119	6.80
Suwannee	FL	12121	6.40
Taylor	FL	12123	6.40
Union	FL	12125	6.40
Volusia	FL	12127	6.80
Wakulla	FL	12129	6.00
Walton	FL	12131	6.00
Washington	FL	12133	6.00
Appling	GA	13001	6.00
Atkinson	GA	13003	6.00
Bacon	GA	13005	6.00
Baker	GA	13007	5.80
Baldwin	GA	13009	5.80
Banks	GA	13011	5.60
Barrow	GA	13013	5.80
Bartow	GA	13015	5.60
Ben Hill	GA	13017	6.00
Berrien	GA	13019	6.00
Bibb	GA	13021	5.80
Bleckley	GA	13023	5.80
Brantley	GA	13025	6.00
Brooks	GA	13027	6.00
Bryan	GA	13029	6.00
Bulloch	GA	13031	6.00
Burke	GA	13033	6.00
Butts	GA	13035	5.80
Calhoun	GA	13037	5.80
Camden	GA	13039	6.00
Candler	GA	13043	6.00
Carroll	GA	13045	5.60
Catoosa	GA	13047	5.40
Charlton	GA	13049	6.00
Chatham	GA	13051	6.00
Chattahoochee	GA	13053	5.80
Chattooga	GA	13055	5.40
Cherokee	GA	13057	5.60
Clarke	GA	13059	5.80
Clay	GA	13061	5.80
Clayton	GA	13063	5.80
Clinch	GA	13065	6.00
Cobb	GA	13067	5.60
Coffee	GA	13069	6.00
Colquitt	GA	13071	6.00
Columbia	GA	13073	5.80
Cook	GA	13075	6.00
Coweta	GA	13077	5.80
Crawford	GA	13079	5.80
Crisp	GA	13081	5.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
Dade	GA	13083	5.40
Dawson	GA	13085	5.60
Decatur	GA	13087	6.00
DeKalb	GA	13089	5.80
Dodge	GA	13091	5.80
Dooly	GA	13093	5.80
Dougherty	GA	13095	5.80
Douglas	GA	13097	5.60
Early	GA	13099	5.80
Echols	GA	13101	6.00
Effingham	GA	13103	6.00
Elbert	GA	13105	5.80
Emanuel	GA	13107	6.00
Evans	GA	13109	6.00
Fannin	GA	13111	5.60
Fayette	GA	13113	5.80
Floyd	GA	13115	5.60
Forsyth	GA	13117	5.60
Franklin	GA	13119	5.60
Fulton	GA	13121	5.80
Gilmer	GA	13123	5.60
Glascock	GA	13125	5.80
Glynn	GA	13127	6.00
Gordon	GA	13129	5.60
Grady	GA	13131	6.00
Greene	GA	13133	5.80
Gwinnett	GA	13135	5.80
Habersham	GA	13137	5.60
Hall	GA	13139	5.60
Hancock	GA	13141	5.80
Haralson	GA	13143	5.60
Harris	GA	13145	5.80
Hart	GA	13147	5.60
Heard	GA	13149	5.60
Henry	GA	13151	5.80
Houston	GA	13153	5.80
Irwin	GA	13155	6.00
Jackson	GA	13157	5.80
Jasper	GA	13159	5.80
Jeff Davis	GA	13161	6.00
Jefferson	GA	13163	5.80
Jenkins	GA	13165	6.00
Johnson	GA	13167	5.80
Jones	GA	13169	5.80
Lamar	GA	13171	5.80
Lanier	GA	13173	6.00
Laurens	GA	13175	5.80
Lee	GA	13177	5.80
Liberty	GA	13179	6.00
Lincoln	GA	13181	5.80
Long	GA	13183	6.00
Lowndes	GA	13185	6.00
Lumpkin	GA	13187	5.60
Macon	GA	13193	5.80
Madison	GA	13195	5.80
Marion	GA	13197	5.80
McDuffie	GA	13189	5.80
McIntosh	GA	13191	6.00
Meriwether	GA	13199	5.80
Miller	GA	13201	5.80
Mitchell	GA	13205	5.80
Monroe	GA	13207	5.80
Montgomery	GA	13209	6.00
Morgan	GA	13211	5.80
Murray	GA	13213	5.40
Muscogee	GA	13215	5.80
Newton	GA	13217	5.80
Oconee	GA	13219	5.80
Oglethorpe	GA	13221	5.80
Paulding	GA	13223	5.60
Peach	GA	13225	5.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
Pickens	GA	13227	5.60
Pierce	GA	13229	6.00
Pike	GA	13231	5.80
Polk	GA	13233	5.60
Pulaski	GA	13235	5.80
Putnam	GA	13237	5.80
Quitman	GA	13239	5.80
Rabun	GA	13241	5.60
Randolph	GA	13243	5.80
Richmond	GA	13245	6.00
Rockdale	GA	13247	5.80
Schley	GA	13249	5.80
Screven	GA	13251	6.00
Seminole	GA	13253	6.00
Spalding	GA	13255	5.80
Stephens	GA	13257	5.60
Stewart	GA	13259	5.80
Sumter	GA	13261	5.80
Talbot	GA	13263	5.80
Taliaferro	GA	13265	5.80
Tattnall	GA	13267	6.00
Taylor	GA	13269	5.80
Telfair	GA	13271	6.00
Terrell	GA	13273	5.80
Thomas	GA	13275	6.00
Tift	GA	13277	5.80
Toombs	GA	13279	6.00
Towns	GA	13281	5.60
Treutlen	GA	13283	6.00
Troup	GA	13285	5.60
Turner	GA	13287	5.80
Twiggs	GA	13289	5.80
Union	GA	13291	5.60
Upson	GA	13293	5.80
Walker	GA	13295	5.40
Walton	GA	13297	5.80
Ware	GA	13299	6.00
Warren	GA	13301	5.80
Washington	GA	13303	5.80
Wayne	GA	13305	6.00
Webster	GA	13307	5.80
Wheeler	GA	13309	6.00
White	GA	13311	5.60
Whitfield	GA	13313	5.40
Wilcox	GA	13315	5.80
Wilkes	GA	13317	5.80
Wilkinson	GA	13319	5.80
Worth	GA	13321	5.80
Adair	IA	19001	2.70
Adams	IA	19003	2.90
Allamakee	IA	19005	2.90
Appanoose	IA	19007	2.90
Audubon	IA	19009	2.70
Benton	IA	19011	2.90
Black Hawk	IA	19013	2.90
Boone	IA	19015	2.70
Bremer	IA	19017	2.90
Buchanan	IA	19019	2.90
Buena Vista	IA	19021	2.60
Butler	IA	19023	2.90
Calhoun	IA	19025	2.70
Carroll	IA	19027	2.70
Cass	IA	19029	2.70
Cedar	IA	19031	3.10
Cerro Gordo	IA	19033	2.90
Cherokee	IA	19035	2.60
Chickasaw	IA	19037	2.90
Clarke	IA	19039	2.90
Clay	IA	19041	2.60
Clayton	IA	19043	2.90
Clinton	IA	19045	3.10

County/parish/city	State	FIPS code	Class I differential adjusted for location
Crawford	IA	19047	2.60
Dallas	IA	19049	2.70
Davis	IA	19051	2.90
Decatur	IA	19053	2.90
Delaware	IA	19055	2.90
Des Moines	IA	19057	3.10
Dickinson	IA	19059	2.70
Dubuque	IA	19061	3.10
Emmet	IA	19063	2.70
Fayette	IA	19065	2.90
Floyd	IA	19067	2.90
Franklin	IA	19069	2.70
Fremont	IA	19071	2.70
Greene	IA	19073	2.70
Grundy	IA	19075	2.90
Guthrie	IA	19077	2.70
Hamilton	IA	19079	2.70
Hancock	IA	19081	2.70
Hardin	IA	19083	2.70
Harrison	IA	19085	2.60
Henry	IA	19087	2.90
Howard	IA	19089	2.80
Humboldt	IA	19091	2.70
Ida	IA	19093	2.60
Iowa	IA	19095	2.90
Jackson	IA	19097	3.10
Jasper	IA	19099	2.90
Jefferson	IA	19101	2.90
Johnson	IA	19103	2.90
Jones	IA	19105	3.10
Keokuk	IA	19107	2.90
Kossuth	IA	19109	2.70
Lee	IA	19111	3.10
Linn	IA	19113	2.90
Louisa	IA	19115	3.10
Lucas	IA	19117	2.90
Lyon	IA	19119	2.60
Madison	IA	19121	2.70
Mahaska	IA	19123	2.90
Marion	IA	19125	2.90
Marshall	IA	19127	2.90
Mills	IA	19129	2.70
Mitchell	IA	19131	2.80
Monona	IA	19133	2.60
Monroe	IA	19135	2.90
Montgomery	IA	19137	2.70
Muscatine	IA	19139	3.10
O'Brien	IA	19141	2.60
Osceola	IA	19143	2.70
Page	IA	19145	2.90
Palo Alto	IA	19147	2.70
Plymouth	IA	19149	2.60
Pocahontas	IA	19151	2.70
Polk	IA	19153	2.70
Pottawattamie	IA	19155	2.70
Poweshiek	IA	19157	2.90
Ringgold	IA	19159	2.90
Sac	IA	19161	2.60
Scott	IA	19163	3.10
Shelby	IA	19165	2.60
Sioux	IA	19167	2.60
Story	IA	19169	2.70
Tama	IA	19171	2.90
Taylor	IA	19173	2.90
Union	IA	19175	2.90
Van Buren	IA	19177	2.90
Wapello	IA	19179	2.90
Warren	IA	19181	2.70
Washington	IA	19183	2.90
Wayne	IA	19185	2.90
Webster	IA	19187	2.70

County/parish/city	State	FIPS code	Class I differential adjusted for location
Winnebago	IA	19189	2.70
Winneshiek	IA	19191	2.80
Woodbury	IA	19193	2.60
Worth	IA	19195	2.80
Wright	IA	19197	2.70
Ada	ID	16001	1.70
Adams	ID	16003	2.00
Bannock	ID	16005	2.00
Bear Lake	ID	16007	2.20
Benewah	ID	16009	2.40
Bingham	ID	16011	2.00
Blaine	ID	16013	1.80
Boise	ID	16015	1.70
Bonner	ID	16017	2.40
Bonneville	ID	16019	2.00
Boundary	ID	16021	2.40
Butte	ID	16023	2.00
Camas	ID	16025	1.80
Canyon	ID	16027	1.70
Caribou	ID	16029	2.00
Cassia	ID	16031	1.70
Clark	ID	16033	2.00
Clearwater	ID	16035	2.00
Custer	ID	16037	1.80
Elmore	ID	16039	1.70
Franklin	ID	16041	2.00
Fremont	ID	16043	2.00
Gem	ID	16045	1.70
Gooding	ID	16047	1.70
Idaho	ID	16049	2.00
Jefferson	ID	16051	2.00
Jerome	ID	16053	1.70
Kootenai	ID	16055	2.40
Latah	ID	16057	2.20
Lemhi	ID	16059	1.80
Lewis	ID	16061	2.00
Lincoln	ID	16063	1.70
Madison	ID	16065	2.00
Minidoka	ID	16067	1.70
Nez Perce	ID	16069	2.00
Oneida	ID	16071	2.00
Owyhee	ID	16073	1.80
Payette	ID	16075	1.70
Power	ID	16077	2.00
Shoshone	ID	16079	2.20
Teton	ID	16081	2.00
Twin Falls	ID	16083	1.70
Valley	ID	16085	1.80
Washington	ID	16087	1.70
Adams	IL	17001	3.20
Alexander	IL	17003	4.00
Bond	IL	17005	3.60
Boone	IL	17007	3.10
Brown	IL	17009	3.40
Bureau	IL	17011	3.40
Calhoun	IL	17013	3.60
Carroll	IL	17015	3.20
Cass	IL	17017	3.40
Champaign	IL	17019	3.60
Christian	IL	17021	3.60
Clark	IL	17023	3.60
Clay	IL	17025	3.60
Clinton	IL	17027	3.60
Coles	IL	17029	3.60
Cook	IL	17031	3.20
Crawford	IL	17033	3.60
Cumberland	IL	17035	3.60
De Witt	IL	17039	3.40
DeKalb	IL	17037	3.20
Douglas	IL	17041	3.60
DuPage	IL	17043	3.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
Edgar	IL	17045	3.60
Edwards	IL	17047	3.60
Effingham	IL	17049	3.60
Fayette	IL	17051	3.60
Ford	IL	17053	3.60
Franklin	IL	17055	3.60
Fulton	IL	17057	3.40
Gallatin	IL	17059	4.00
Greene	IL	17061	3.60
Grundy	IL	17063	3.40
Hamilton	IL	17065	3.60
Hancock	IL	17067	3.20
Hardin	IL	17069	4.00
Henderson	IL	17071	3.20
Henry	IL	17073	3.20
Iroquois	IL	17075	3.60
Jackson	IL	17077	3.60
Jasper	IL	17079	3.60
Jefferson	IL	17081	3.60
Jersey	IL	17083	3.60
Jo Daviess	IL	17085	3.10
Johnson	IL	17087	4.00
Kane	IL	17089	3.20
Kankakee	IL	17091	3.40
Kendall	IL	17093	3.20
Knox	IL	17095	3.40
La Salle	IL	17099	3.40
Lake	IL	17097	3.10
Lawrence	IL	17101	3.60
Lee	IL	17103	3.20
Livingston	IL	17105	3.40
Logan	IL	17107	3.40
Macon	IL	17115	3.40
Macoupin	IL	17117	3.60
Madison	IL	17119	3.60
Marion	IL	17121	3.60
Marshall	IL	17123	3.40
Mason	IL	17125	3.40
Massac	IL	17127	4.00
McDonough	IL	17109	3.40
McHenry	IL	17111	3.10
McLean	IL	17113	3.40
Menard	IL	17129	3.40
Mercer	IL	17131	3.20
Monroe	IL	17133	3.60
Montgomery	IL	17135	3.60
Morgan	IL	17137	3.40
Moultrie	IL	17139	3.60
Ogle	IL	17141	3.20
Peoria	IL	17143	3.40
Perry	IL	17145	3.60
Piatt	IL	17147	3.40
Pike	IL	17149	3.40
Pope	IL	17151	4.00
Pulaski	IL	17153	4.00
Putnam	IL	17155	3.40
Randolph	IL	17157	3.60
Richland	IL	17159	3.60
Rock Island	IL	17161	3.20
Saline	IL	17165	4.00
Sangamon	IL	17167	3.40
Schuyler	IL	17169	3.40
Scott	IL	17171	3.40
Shelby	IL	17173	3.60
St. Clair	IL	17163	3.60
Stark	IL	17175	3.40
Stephenson	IL	17177	3.10
Tazewell	IL	17179	3.40
Union	IL	17181	4.00
Vermilion	IL	17183	3.60
Wabash	IL	17185	3.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
Warren	IL	17187	3.20
Washington	IL	17189	3.60
Wayne	IL	17191	3.60
White	IL	17193	3.60
Whiteside	IL	17195	3.20
Will	IL	17197	3.20
Williamson	IL	17199	4.00
Winnebago	IL	17201	3.10
Woodford	IL	17203	3.40
Adams	IN	18001	3.30
Allen	IN	18003	3.30
Bartholomew	IN	18005	3.70
Benton	IN	18007	3.60
Blackford	IN	18009	3.30
Boone	IN	18011	3.60
Brown	IN	18013	3.70
Carroll	IN	18015	3.60
Cass	IN	18017	3.30
Clark	IN	18019	4.00
Clay	IN	18021	3.60
Clinton	IN	18023	3.60
Crawford	IN	18025	4.00
Daviess	IN	18027	3.70
Dearborn	IN	18029	3.70
Decatur	IN	18031	3.70
DeKalb	IN	18033	3.30
Delaware	IN	18035	3.60
Dubois	IN	18037	3.70
Elkhart	IN	18039	3.30
Fayette	IN	18041	3.60
Floyd	IN	18043	4.00
Fountain	IN	18045	3.60
Franklin	IN	18047	3.70
Fulton	IN	18049	3.30
Gibson	IN	18051	3.70
Grant	IN	18053	3.30
Greene	IN	18055	3.70
Hamilton	IN	18057	3.60
Hancock	IN	18059	3.60
Harrison	IN	18061	4.00
Hendricks	IN	18063	3.60
Henry	IN	18065	3.60
Howard	IN	18067	3.60
Huntington	IN	18069	3.30
Jackson	IN	18071	3.70
Jasper	IN	18073	3.60
Jay	IN	18075	3.30
Jefferson	IN	18077	4.00
Jennings	IN	18079	3.70
Johnson	IN	18081	3.60
Knox	IN	18083	3.70
Kosciusko	IN	18085	3.30
LaGrange	IN	18087	3.30
Lake	IN	18089	3.30
LaPorte	IN	18091	3.30
Lawrence	IN	18093	3.70
Madison	IN	18095	3.60
Marion	IN	18097	3.60
Marshall	IN	18099	3.30
Martin	IN	18101	3.70
Miami	IN	18103	3.30
Monroe	IN	18105	3.70
Montgomery	IN	18107	3.60
Morgan	IN	18109	3.60
Newton	IN	18111	3.60
Noble	IN	18113	3.30
Ohio	IN	18115	3.70
Orange	IN	18117	3.70
Owen	IN	18119	3.60
Parke	IN	18121	3.60
Perry	IN	18123	4.00

County/parish/city	State	FIPS code	Class I differential adjusted for location
Pike	IN	18125	3.70
Porter	IN	18127	3.30
Posey	IN	18129	3.70
Pulaski	IN	18131	3.30
Putnam	IN	18133	3.60
Randolph	IN	18135	3.60
Ripley	IN	18137	3.70
Rush	IN	18139	3.60
Scott	IN	18143	4.00
Shelby	IN	18145	3.60
Spencer	IN	18147	4.00
St. Joseph	IN	18141	3.30
Starke	IN	18149	3.30
Steuben	IN	18151	3.30
Sullivan	IN	18153	3.70
Switzerland	IN	18155	4.00
Tippecanoe	IN	18157	3.60
Tipton	IN	18159	3.60
Union	IN	18161	3.60
Vanderburgh	IN	18163	3.70
Vermillion	IN	18165	3.60
Vigo	IN	18167	3.60
Wabash	IN	18169	3.30
Warren	IN	18171	3.60
Warrick	IN	18173	3.70
Washington	IN	18175	4.00
Wayne	IN	18177	3.60
Wells	IN	18179	3.30
White	IN	18181	3.60
Whitley	IN	18183	3.30
Allen	KS	20001	2.90
Anderson	KS	20003	2.90
Atchison	KS	20005	2.90
Barber	KS	20007	2.60
Barton	KS	20009	2.60
Bourbon	KS	20011	3.20
Brown	KS	20013	2.90
Butler	KS	20015	2.90
Chase	KS	20017	2.70
Chautauqua	KS	20019	2.90
Cherokee	KS	20021	3.20
Cheyenne	KS	20023	2.50
Clark	KS	20025	2.60
Clay	KS	20027	2.70
Cloud	KS	20029	2.70
Coffey	KS	20031	2.90
Comanche	KS	20033	2.60
Cowley	KS	20035	2.90
Crawford	KS	20037	3.20
Decatur	KS	20039	2.50
Dickinson	KS	20041	2.70
Doniphan	KS	20043	2.90
Douglas	KS	20045	2.90
Edwards	KS	20047	2.60
Elk	KS	20049	2.90
Ellis	KS	20051	2.50
Ellsworth	KS	20053	2.60
Finney	KS	20055	2.50
Ford	KS	20057	2.50
Franklin	KS	20059	2.90
Geary	KS	20061	2.70
Gove	KS	20063	2.50
Graham	KS	20065	2.50
Grant	KS	20067	2.50
Gray	KS	20069	2.50
Greeley	KS	20071	2.50
Greenwood	KS	20073	2.90
Hamilton	KS	20075	2.50
Harper	KS	20077	2.90
Harvey	KS	20079	2.90
Haskell	KS	20081	2.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
Hodgeman	KS	20083	2.50
Jackson	KS	20085	2.90
Jefferson	KS	20087	2.90
Jewell	KS	20089	2.60
Johnson	KS	20091	3.20
Kearny	KS	20093	2.50
Kingman	KS	20095	2.90
Kiowa	KS	20097	2.60
Labette	KS	20099	3.20
Lane	KS	20101	2.50
Leavenworth	KS	20103	2.90
Lincoln	KS	20105	2.60
Linn	KS	20107	3.20
Logan	KS	20109	2.50
Lyon	KS	20111	2.90
Marion	KS	20115	2.70
Marshall	KS	20117	2.70
McPherson	KS	20113	2.70
Meade	KS	20119	2.50
Miami	KS	20121	3.20
Mitchell	KS	20123	2.60
Montgomery	KS	20125	3.20
Morris	KS	20127	2.70
Morton	KS	20129	2.50
Nemaha	KS	20131	2.70
Neosho	KS	20133	2.90
Ness	KS	20135	2.50
Norton	KS	20137	2.50
Osage	KS	20139	2.90
Osborne	KS	20141	2.50
Ottawa	KS	20143	2.70
Pawnee	KS	20145	2.50
Phillips	KS	20147	2.50
Pottawatomie	KS	20149	2.70
Pratt	KS	20151	2.60
Rawlins	KS	20153	2.50
Reno	KS	20155	2.90
Republic	KS	20157	2.60
Rice	KS	20159	2.60
Riley	KS	20161	2.70
Rooks	KS	20163	2.50
Rush	KS	20165	2.50
Russell	KS	20167	2.50
Saline	KS	20169	2.70
Scott	KS	20171	2.50
Sedgwick	KS	20173	2.90
Seward	KS	20175	2.50
Shawnee	KS	20177	2.90
Sheridan	KS	20179	2.50
Sherman	KS	20181	2.50
Smith	KS	20183	2.50
Stafford	KS	20185	2.60
Stanton	KS	20187	2.50
Stevens	KS	20189	2.50
Sumner	KS	20191	2.90
Thomas	KS	20193	2.50
Trego	KS	20195	2.50
Wabaunsee	KS	20197	2.90
Wallace	KS	20199	2.50
Washington	KS	20201	2.70
Wichita	KS	20203	2.50
Wilson	KS	20205	2.90
Woodson	KS	20207	2.90
Wyandotte	KS	20209	3.20
Adair	KY	21001	4.20
Allen	KY	21003	4.20
Anderson	KY	21005	4.20
Ballard	KY	21007	4.00
Barren	KY	21009	4.20
Bath	KY	21011	4.20
Bell	KY	21013	4.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
Boone	KY	21015	4.00
Bourbon	KY	21017	4.20
Boyd	KY	21019	4.20
Boyle	KY	21021	4.20
Bracken	KY	21023	4.00
Breathitt	KY	21025	4.50
Breckinridge	KY	21027	4.00
Bullitt	KY	21029	4.00
Butler	KY	21031	4.20
Caldwell	KY	21033	4.00
Calloway	KY	21035	4.20
Campbell	KY	21037	4.00
Carlisle	KY	21039	4.00
Carroll	KY	21041	4.00
Carter	KY	21043	4.20
Casey	KY	21045	4.20
Christian	KY	21047	4.20
Clark	KY	21049	4.20
Clay	KY	21051	4.50
Clinton	KY	21053	4.50
Crittenden	KY	21055	4.00
Cumberland	KY	21057	4.50
Daviess	KY	21059	4.00
Edmonson	KY	21061	4.20
Elliott	KY	21063	4.20
Estill	KY	21065	4.20
Fayette	KY	21067	4.20
Fleming	KY	21069	4.20
Floyd	KY	21071	4.50
Franklin	KY	21073	4.00
Fulton	KY	21075	4.00
Gallatin	KY	21077	4.00
Garrard	KY	21079	4.20
Grant	KY	21081	4.00
Graves	KY	21083	4.20
Grayson	KY	21085	4.00
Green	KY	21087	4.20
Greenup	KY	21089	4.20
Hancock	KY	21091	4.00
Hardin	KY	21093	4.20
Harlan	KY	21095	4.80
Harrison	KY	21097	4.20
Hart	KY	21099	4.20
Henderson	KY	21101	4.00
Henry	KY	21103	4.00
Hickman	KY	21105	4.00
Hopkins	KY	21107	4.00
Jackson	KY	21109	4.20
Jefferson	KY	21111	4.00
Jessamine	KY	21113	4.20
Johnson	KY	21115	4.50
Kenton	KY	21117	4.00
Knott	KY	21119	4.50
Knox	KY	21121	4.50
Larue	KY	21123	4.20
Laurel	KY	21125	4.50
Lawrence	KY	21127	4.20
Lee	KY	21129	4.20
Leslie	KY	21131	4.50
Letcher	KY	21133	4.80
Lewis	KY	21135	4.20
Lincoln	KY	21137	4.20
Livingston	KY	21139	4.00
Logan	KY	21141	4.20
Lyon	KY	21143	4.00
Madison	KY	21151	4.20
Magoffin	KY	21153	4.50
Marion	KY	21155	4.20
Marshall	KY	21157	4.00
Martin	KY	21159	4.50
Mason	KY	21161	4.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
McCracken	KY	21145	4.00
McCreary	KY	21147	4.50
McLean	KY	21149	4.00
Meade	KY	21163	4.00
Menifee	KY	21165	4.20
Mercer	KY	21167	4.20
Metcalfe	KY	21169	4.20
Monroe	KY	21171	4.50
Montgomery	KY	21173	4.20
Morgan	KY	21175	4.20
Muhlenberg	KY	21177	4.00
Nelson	KY	21179	4.20
Nicholas	KY	21181	4.20
Ohio	KY	21183	4.00
Oldham	KY	21185	4.00
Owen	KY	21187	4.00
Owsley	KY	21189	4.50
Pendleton	KY	21191	4.00
Perry	KY	21193	4.50
Pike	KY	21195	4.50
Powell	KY	21197	4.20
Pulaski	KY	21199	4.50
Robertson	KY	21201	4.20
Rockcastle	KY	21203	4.20
Rowan	KY	21205	4.20
Russell	KY	21207	4.50
Scott	KY	21209	4.00
Shelby	KY	21211	4.00
Simpson	KY	21213	4.20
Spencer	KY	21215	4.00
Taylor	KY	21217	4.20
Todd	KY	21219	4.20
Trigg	KY	21221	4.20
Trimble	KY	21223	4.00
Union	KY	21225	4.00
Warren	KY	21227	4.20
Washington	KY	21229	4.20
Wayne	KY	21231	4.50
Webster	KY	21233	4.00
Whitley	KY	21235	4.50
Wolfe	KY	21237	4.20
Woodford	KY	21239	4.20
Acadia Parish	LA	22001	5.20
Allen Parish	LA	22003	4.90
Ascension Parish	LA	22005	5.20
Assumption Parish	LA	22007	5.20
Avoyelles Parish	LA	22009	5.20
Beauregard Parish	LA	22011	4.90
Bienville Parish	LA	22013	4.60
Bossier Parish	LA	22015	4.30
Caddo Parish	LA	22017	4.30
Calcasieu Parish	LA	22019	4.90
Caldwell Parish	LA	22021	4.90
Cameron Parish	LA	22023	4.90
Catahoula Parish	LA	22025	5.20
Claiborne Parish	LA	22027	4.30
Concordia Parish	LA	22029	5.20
De Soto Parish	LA	22031	4.30
East Baton Rouge Parish	LA	22033	5.20
East Carroll Parish	LA	22035	5.20
East Feliciana Parish	LA	22037	5.20
Evangeline Parish	LA	22039	4.90
Franklin Parish	LA	22041	4.90
Grant Parish	LA	22043	4.90
Iberia Parish	LA	22045	5.20
Iberville Parish	LA	22047	5.20
Jackson Parish	LA	22049	4.60
Jefferson Davis Parish	LA	22053	4.90
Jefferson Parish	LA	22051	5.60
La Salle Parish	LA	22059	4.90
Lafayette Parish	LA	22055	5.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
Lafourche Parish	LA	22057	5.60
Lincoln Parish	LA	22061	4.60
Livingston Parish	LA	22063	5.40
Madison Parish	LA	22065	5.20
Morehouse Parish	LA	22067	4.90
Natchitoches Parish	LA	22069	4.60
Orleans Parish	LA	22071	5.60
Ouachita Parish	LA	22073	4.90
Plaquemines Parish	LA	22075	5.60
Pointe Coupee Parish	LA	22077	5.20
Rapides Parish	LA	22079	4.90
Red River Parish	LA	22081	4.60
Richland Parish	LA	22083	4.90
Sabine Parish	LA	22085	4.60
St. Bernard Parish	LA	22087	5.60
St. Charles Parish	LA	22089	5.60
St. Helena Parish	LA	22091	5.40
St. James Parish	LA	22093	5.20
St. John the Baptist Parish	LA	22095	5.60
St. Landry Parish	LA	22097	5.20
St. Martin Parish	LA	22099	5.20
St. Mary Parish	LA	22101	5.20
St. Tammany Parish	LA	22103	5.60
Tangipahoa Parish	LA	22105	5.40
Tensas Parish	LA	22107	5.20
Terrebonne Parish	LA	22109	5.60
Union Parish	LA	22111	4.60
Vermilion Parish	LA	22113	5.20
Vernon Parish	LA	22115	4.60
Washington Parish	LA	22117	5.60
Webster Parish	LA	22119	4.30
West Baton Rouge Parish	LA	22121	5.20
West Carroll Parish	LA	22123	4.90
West Feliciana Parish	LA	22125	5.20
Winn Parish	LA	22127	4.60
Barnstable	MA	25001	5.10
Berkshire	MA	25003	4.50
Bristol	MA	25005	5.10
Dukes	MA	25007	5.10
Essex	MA	25009	5.10
Franklin	MA	25011	4.70
Hampden	MA	25013	4.70
Hampshire	MA	25015	4.70
Middlesex	MA	25017	5.10
Nantucket	MA	25019	5.10
Norfolk	MA	25021	5.10
Plymouth	MA	25023	5.10
Suffolk	MA	25025	5.10
Worcester	MA	25027	4.90
Allegany	MD	24001	4.10
Anne Arundel	MD	24003	4.60
Baltimore	MD	24005	4.40
Baltimore City	MD	24510	4.60
Calvert	MD	24009	4.80
Caroline	MD	24011	4.60
Carroll	MD	24013	4.40
Cecil	MD	24015	4.40
Charles	MD	24017	4.80
Dorchester	MD	24019	4.80
Frederick	MD	24021	4.40
Garrett	MD	24023	4.10
Harford	MD	24025	4.40
Howard	MD	24027	4.60
Kent	MD	24029	4.60
Montgomery	MD	24031	4.60
Prince George's	MD	24033	4.60
Queen Anne's	MD	24035	4.60
Somerset	MD	24039	4.80
St. Mary's	MD	24037	4.80
Talbot	MD	24041	4.60
Washington	MD	24043	4.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
Wicomico	MD	24045	4.80
Worcester	MD	24047	4.80
Androscoggin	ME	23001	4.20
Aroostook	ME	23003	3.90
Cumberland	ME	23005	4.50
Franklin	ME	23007	4.20
Hancock	ME	23009	3.90
Kennebec	ME	23011	4.20
Knox	ME	23013	4.20
Lincoln	ME	23015	4.20
Oxford	ME	23017	4.20
Penobscot	ME	23019	3.90
Piscataquis	ME	23021	3.90
Sagadahoc	ME	23023	4.20
Somerset	ME	23025	3.90
Waldo	ME	23027	3.90
Washington	ME	23029	3.90
York	ME	23031	4.50
Alcona	MI	26001	3.30
Alger	MI	26003	3.00
Allegan	MI	26005	3.30
Alpena	MI	26007	3.30
Antrim	MI	26009	3.30
Arenac	MI	26011	3.30
Baraga	MI	26013	3.00
Barry	MI	26015	3.30
Bay	MI	26017	3.30
Benzie	MI	26019	3.30
Berrien	MI	26021	3.30
Branch	MI	26023	3.30
Calhoun	MI	26025	3.30
Cass	MI	26027	3.30
Charlevoix	MI	26029	3.30
Cheboygan	MI	26031	3.30
Chippewa	MI	26033	3.00
Clare	MI	26035	3.30
Clinton	MI	26037	3.30
Crawford	MI	26039	3.30
Delta	MI	26041	2.80
Dickinson	MI	26043	2.80
Eaton	MI	26045	3.30
Emmet	MI	26047	3.30
Genesee	MI	26049	3.30
Gladwin	MI	26051	3.30
Gogebic	MI	26053	2.80
Grand Traverse	MI	26055	3.30
Gratiot	MI	26057	3.30
Hillsdale	MI	26059	3.30
Houghton	MI	26061	3.00
Huron	MI	26063	3.30
Ingham	MI	26065	3.30
Ionia	MI	26067	3.30
Iosco	MI	26069	3.30
Iron	MI	26071	2.80
Isabella	MI	26073	3.30
Jackson	MI	26075	3.30
Kalamazoo	MI	26077	3.30
Kalkaska	MI	26079	3.30
Kent	MI	26081	3.30
Keweenaw	MI	26083	3.00
Lake	MI	26085	3.30
Lapeer	MI	26087	3.30
Leelanau	MI	26089	3.30
Lenawee	MI	26091	3.30
Livingston	MI	26093	3.30
Luce	MI	26095	3.00
Mackinac	MI	26097	3.00
Macomb	MI	26099	3.30
Manistee	MI	26101	3.30
Marquette	MI	26103	3.00
Mason	MI	26105	3.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
Mecosta	MI	26107	3.30
Menominee	MI	26109	2.80
Midland	MI	26111	3.30
Missaukee	MI	26113	3.30
Monroe	MI	26115	3.30
Montcalm	MI	26117	3.30
Montmorency	MI	26119	3.30
Muskegon	MI	26121	3.30
Newaygo	MI	26123	3.30
Oakland	MI	26125	3.30
Oceana	MI	26127	3.30
Ogemaw	MI	26129	3.30
Ontonagon	MI	26131	2.80
Osceola	MI	26133	3.30
Oscoda	MI	26135	3.30
Otsego	MI	26137	3.30
Ottawa	MI	26139	3.30
Presque Isle	MI	26141	3.30
Roscommon	MI	26143	3.30
Saginaw	MI	26145	3.30
Sanilac	MI	26151	3.30
Schoolcraft	MI	26153	3.00
Shiawassee	MI	26155	3.30
St. Clair	MI	26147	3.30
St. Joseph	MI	26149	3.30
Tuscola	MI	26157	3.30
Van Buren	MI	26159	3.30
Washtenaw	MI	26161	3.30
Wayne	MI	26163	3.30
Wexford	MI	26165	3.30
Aitkin	MN	27001	2.80
Anoka	MN	27003	2.80
Becker	MN	27005	2.70
Beltrami	MN	27007	2.30
Benton	MN	27009	2.80
Big Stone	MN	27011	2.70
Blue Earth	MN	27013	2.80
Brown	MN	27015	2.80
Carlton	MN	27017	2.80
Carver	MN	27019	2.80
Cass	MN	27021	2.80
Chippewa	MN	27023	2.80
Chisago	MN	27025	2.80
Clay	MN	27027	2.70
Clearwater	MN	27029	2.30
Cook	MN	27031	2.30
Cottonwood	MN	27033	2.80
Crow Wing	MN	27035	2.80
Dakota	MN	27037	2.90
Dodge	MN	27039	2.80
Douglas	MN	27041	2.80
Faribault	MN	27043	2.80
Fillmore	MN	27045	2.80
Freeborn	MN	27047	2.80
Goodhue	MN	27049	2.80
Grant	MN	27051	2.80
Hennepin	MN	27053	2.90
Houston	MN	27055	2.80
Hubbard	MN	27057	2.70
Isanti	MN	27059	2.80
Itasca	MN	27061	2.30
Jackson	MN	27063	2.80
Kanabec	MN	27065	2.80
Kandiyohi	MN	27067	2.80
Kittson	MN	27069	2.30
Koochiching	MN	27071	2.30
Lac qui Parle	MN	27073	2.70
Lake	MN	27075	2.30
Lake of the Woods	MN	27077	2.30
Le Sueur	MN	27079	2.80
Lincoln	MN	27081	2.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
Lyon	MN	27083	2.70
Mahnomen	MN	27087	2.60
Marshall	MN	27089	2.30
Martin	MN	27091	2.80
McLeod	MN	27085	2.80
Meeker	MN	27093	2.80
Mille Lacs	MN	27095	2.80
Morrison	MN	27097	2.80
Mower	MN	27099	2.80
Murray	MN	27101	2.70
Nicollet	MN	27103	2.80
Nobles	MN	27105	2.70
Norman	MN	27107	2.60
Olmsted	MN	27109	2.80
Otter Tail	MN	27111	2.80
Pennington	MN	27113	2.30
Pine	MN	27115	2.80
Pipestone	MN	27117	2.60
Polk	MN	27119	2.30
Pope	MN	27121	2.80
Ramsey	MN	27123	2.90
Red Lake	MN	27125	2.30
Redwood	MN	27127	2.80
Renville	MN	27129	2.80
Rice	MN	27131	2.80
Rock	MN	27133	2.60
Roseau	MN	27135	2.30
Scott	MN	27139	2.90
Sherburne	MN	27141	2.80
Sibley	MN	27143	2.80
St. Louis	MN	27137	2.30
Stearns	MN	27145	2.80
Steele	MN	27147	2.80
Stevens	MN	27149	2.80
Swift	MN	27151	2.80
Todd	MN	27153	2.80
Traverse	MN	27155	2.70
Wabasha	MN	27157	2.80
Wadena	MN	27159	2.80
Waseca	MN	27161	2.80
Washington	MN	27163	2.90
Watonwan	MN	27165	2.80
Wilkin	MN	27167	2.70
Winona	MN	27169	2.80
Wright	MN	27171	2.80
Yellow Medicine	MN	27173	2.70
Adair	MO	29001	3.20
Andrew	MO	29003	2.90
Atchison	MO	29005	2.70
Audrain	MO	29007	3.40
Barry	MO	29009	3.20
Barton	MO	29011	3.20
Bates	MO	29013	3.20
Benton	MO	29015	3.20
Bollinger	MO	29017	3.60
Boone	MO	29019	3.40
Buchanan	MO	29021	3.20
Butler	MO	29023	4.00
Caldwell	MO	29025	3.20
Callaway	MO	29027	3.40
Camden	MO	29029	3.40
Cape Girardeau	MO	29031	3.60
Carroll	MO	29033	3.20
Carter	MO	29035	4.00
Cass	MO	29037	3.20
Cedar	MO	29039	3.20
Chariton	MO	29041	3.20
Christian	MO	29043	3.30
Clark	MO	29045	3.20
Clay	MO	29047	3.20
Clinton	MO	29049	3.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
Cole	MO	29051	3.40
Cooper	MO	29053	3.40
Crawford	MO	29055	3.60
Dade	MO	29057	3.20
Dallas	MO	29059	3.30
Daviess	MO	29061	3.20
DeKalb	MO	29063	3.20
Dent	MO	29065	3.60
Douglas	MO	29067	3.30
Dunklin	MO	29069	4.30
Franklin	MO	29071	3.60
Gasconade	MO	29073	3.60
Gentry	MO	29075	2.90
Greene	MO	29077	3.20
Grundy	MO	29079	3.20
Harrison	MO	29081	2.90
Henry	MO	29083	3.20
Hickory	MO	29085	3.20
Holt	MO	29087	2.90
Howard	MO	29089	3.40
Howell	MO	29091	3.60
Iron	MO	29093	3.60
Jackson	MO	29095	3.20
Jasper	MO	29097	3.20
Jefferson	MO	29099	3.60
Johnson	MO	29101	3.20
Knox	MO	29103	3.20
Laclede	MO	29105	3.30
Lafayette	MO	29107	3.20
Lawrence	MO	29109	3.20
Lewis	MO	29111	3.20
Lincoln	MO	29113	3.60
Linn	MO	29115	3.20
Livingston	MO	29117	3.20
Macon	MO	29121	3.20
Madison	MO	29123	3.60
Maries	MO	29125	3.60
Marion	MO	29127	3.20
McDonald	MO	29119	3.20
Mercer	MO	29129	2.90
Miller	MO	29131	3.40
Mississippi	MO	29133	4.00
Moniteau	MO	29135	3.40
Monroe	MO	29137	3.40
Montgomery	MO	29139	3.40
Morgan	MO	29141	3.40
New Madrid	MO	29143	4.00
Newton	MO	29145	3.20
Nodaway	MO	29147	2.90
Oregon	MO	29149	4.00
Osage	MO	29151	3.60
Ozark	MO	29153	3.60
Pemiscot	MO	29155	4.30
Perry	MO	29157	3.60
Pettis	MO	29159	3.40
Phelps	MO	29161	3.60
Pike	MO	29163	3.40
Platte	MO	29165	3.20
Polk	MO	29167	3.20
Pulaski	MO	29169	3.40
Putnam	MO	29171	2.90
Ralls	MO	29173	3.40
Randolph	MO	29175	3.40
Ray	MO	29177	3.20
Reynolds	MO	29179	3.60
Ripley	MO	29181	4.00
Saline	MO	29195	3.40
Schuyler	MO	29197	3.20
Scotland	MO	29199	3.20
Scott	MO	29201	4.00
Shannon	MO	29203	3.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
Shelby	MO	29205	3.20
St. Charles	MO	29183	3.60
St. Clair	MO	29185	3.20
St. Francois	MO	29187	3.60
St. Louis	MO	29189	3.60
St. Louis City	MO	29510	3.60
Ste. Genevieve	MO	29186	3.60
Stoddard	MO	29207	4.00
Stone	MO	29209	3.30
Sullivan	MO	29211	3.20
Taney	MO	29213	3.30
Texas	MO	29215	3.60
Vernon	MO	29217	3.20
Warren	MO	29219	3.60
Washington	MO	29221	3.60
Wayne	MO	29223	4.00
Webster	MO	29225	3.20
Worth	MO	29227	2.90
Wright	MO	29229	3.30
Adams	MS	28001	5.20
Alcorn	MS	28003	4.90
Amite	MS	28005	5.40
Attala	MS	28007	5.20
Benton	MS	28009	4.90
Bolivar	MS	28011	4.90
Calhoun	MS	28013	5.20
Carroll	MS	28015	5.20
Chickasaw	MS	28017	5.20
Choctaw	MS	28019	5.20
Claiborne	MS	28021	5.20
Clarke	MS	28023	5.60
Clay	MS	28025	5.20
Coahoma	MS	28027	4.90
Copiah	MS	28029	5.40
Covington	MS	28031	5.60
DeSoto	MS	28033	4.60
Forrest	MS	28035	5.80
Franklin	MS	28037	5.20
George	MS	28039	5.80
Greene	MS	28041	5.80
Grenada	MS	28043	5.20
Hancock	MS	28045	5.80
Harrison	MS	28047	5.80
Hinds	MS	28049	5.40
Holmes	MS	28051	5.20
Humphreys	MS	28053	5.20
Issaquena	MS	28055	5.20
Itawamba	MS	28057	5.20
Jackson	MS	28059	5.80
Jasper	MS	28061	5.60
Jefferson	MS	28063	5.20
Jefferson Davis	MS	28065	5.60
Jones	MS	28067	5.60
Kemper	MS	28069	5.40
Lafayette	MS	28071	4.90
Lamar	MS	28073	5.80
Lauderdale	MS	28075	5.60
Lawrence	MS	28077	5.60
Leake	MS	28079	5.40
Lee	MS	28081	5.20
Leflore	MS	28083	5.20
Lincoln	MS	28085	5.40
Lowndes	MS	28087	5.20
Madison	MS	28089	5.40
Marion	MS	28091	5.60
Marshall	MS	28093	4.90
Monroe	MS	28095	5.20
Montgomery	MS	28097	5.20
Neshoba	MS	28099	5.40
Newton	MS	28101	5.60
Noxubee	MS	28103	5.40

County/parish/city	State	FIPS code	Class I differential adjusted for location
Oktibbeha	MS	28105	5.20
Panola	MS	28107	4.90
Pearl River	MS	28109	5.80
Perry	MS	28111	5.80
Pike	MS	28113	5.40
Pontotoc	MS	28115	4.90
Prentiss	MS	28117	4.90
Quitman	MS	28119	4.90
Rankin	MS	28121	5.40
Scott	MS	28123	5.40
Sharkey	MS	28125	5.20
Simpson	MS	28127	5.60
Smith	MS	28129	5.60
Stone	MS	28131	5.80
Sunflower	MS	28133	4.90
Tallahatchie	MS	28135	4.90
Tate	MS	28137	4.90
Tippah	MS	28139	4.90
Tishomingo	MS	28141	4.90
Tunica	MS	28143	4.60
Union	MS	28145	4.90
Walthall	MS	28147	5.60
Warren	MS	28149	5.20
Washington	MS	28151	4.90
Wayne	MS	28153	5.80
Webster	MS	28155	5.20
Wilkinson	MS	28157	5.20
Winston	MS	28159	5.40
Yalobusha	MS	28161	4.90
Yazoo	MS	28163	5.20
Beaverhead	MT	30001	1.80
Big Horn	MT	30003	2.40
Blaine	MT	30005	2.00
Broadwater	MT	30007	1.80
Carbon	MT	30009	2.40
Carter	MT	30011	2.40
Cascade	MT	30013	1.80
Chouteau	MT	30015	1.80
Custer	MT	30017	2.40
Daniels	MT	30019	2.30
Dawson	MT	30021	2.40
Deer Lodge	MT	30023	1.80
Fallon	MT	30025	2.40
Fergus	MT	30027	2.00
Flathead	MT	30029	2.00
Gallatin	MT	30031	2.00
Garfield	MT	30033	2.40
Glacier	MT	30035	1.80
Golden Valley	MT	30037	2.00
Granite	MT	30039	1.80
Hill	MT	30041	1.80
Jefferson	MT	30043	1.80
Judith Basin	MT	30045	2.00
Lake	MT	30047	2.00
Lewis and Clark	MT	30049	1.70
Liberty	MT	30051	1.80
Lincoln	MT	30053	2.00
Madison	MT	30057	1.80
McCone	MT	30055	2.40
Meagher	MT	30059	1.80
Mineral	MT	30061	2.00
Missoula	MT	30063	1.80
Musselshell	MT	30065	2.40
Park	MT	30067	2.00
Petroleum	MT	30069	2.40
Phillips	MT	30071	2.30
Pondera	MT	30073	1.70
Powder River	MT	30075	2.40
Powell	MT	30077	1.80
Prairie	MT	30079	2.40
Ravalli	MT	30081	1.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
Richland	MT	30083	2.40
Roosevelt	MT	30085	2.30
Rosebud	MT	30087	2.40
Sanders	MT	30089	2.00
Sheridan	MT	30091	2.30
Silver Bow	MT	30093	1.80
Stillwater	MT	30095	2.40
Sweet Grass	MT	30097	2.00
Teton	MT	30099	1.70
Toole	MT	30101	1.80
Treasure	MT	30103	2.40
Valley	MT	30105	2.30
Wheatland	MT	30107	2.00
Wibaux	MT	30109	2.40
Yellowstone	MT	30111	2.40
Alamance	NC	37001	5.40
Alexander	NC	37003	5.60
Alleghany	NC	37005	5.40
Anson	NC	37007	5.80
Ashe	NC	37009	5.40
Avery	NC	37011	5.40
Beaufort	NC	37013	5.80
Bertie	NC	37015	5.60
Bladen	NC	37017	5.80
Brunswick	NC	37019	6.00
Buncombe	NC	37021	5.40
Burke	NC	37023	5.60
Cabarrus	NC	37025	5.60
Caldwell	NC	37027	5.60
Camden	NC	37029	5.60
Carteret	NC	37031	6.00
Caswell	NC	37033	5.40
Catawba	NC	37035	5.60
Chatham	NC	37037	5.60
Cherokee	NC	37039	5.40
Chowan	NC	37041	5.60
Clay	NC	37043	5.60
Cleveland	NC	37045	5.60
Columbus	NC	37047	6.00
Craven	NC	37049	6.00
Cumberland	NC	37051	5.80
Currituck	NC	37053	5.60
Dare	NC	37055	5.80
Davidson	NC	37057	5.60
Davie	NC	37059	5.60
Duplin	NC	37061	5.80
Durham	NC	37063	5.40
Edgecombe	NC	37065	5.60
Forsyth	NC	37067	5.40
Franklin	NC	37069	5.60
Gaston	NC	37071	5.60
Gates	NC	37073	5.60
Graham	NC	37075	5.40
Granville	NC	37077	5.40
Greene	NC	37079	5.80
Guilford	NC	37081	5.40
Halifax	NC	37083	5.60
Harnett	NC	37085	5.80
Haywood	NC	37087	5.40
Henderson	NC	37089	5.60
Hertford	NC	37091	5.60
Hoke	NC	37093	5.80
Hyde	NC	37095	5.80
Iredell	NC	37097	5.60
Jackson	NC	37099	5.60
Johnston	NC	37101	5.80
Jones	NC	37103	6.00
Lee	NC	37105	5.60
Lenoir	NC	37107	5.80
Lincoln	NC	37109	5.60
Macon	NC	37113	5.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
Madison	NC	37115	5.40
Martin	NC	37117	5.80
McDowell	NC	37111	5.60
Mecklenburg	NC	37119	5.60
Mitchell	NC	37121	5.40
Montgomery	NC	37123	5.60
Moore	NC	37125	5.60
Nash	NC	37127	5.60
New Hanover	NC	37129	6.00
Northampton	NC	37131	5.60
Onslow	NC	37133	6.00
Orange	NC	37135	5.40
Pamlico	NC	37137	6.00
Pasquotank	NC	37139	5.60
Pender	NC	37141	6.00
Perquimans	NC	37143	5.60
Person	NC	37145	5.40
Pitt	NC	37147	5.80
Polk	NC	37149	5.60
Randolph	NC	37151	5.60
Richmond	NC	37153	5.80
Robeson	NC	37155	5.80
Rockingham	NC	37157	5.40
Rowan	NC	37159	5.60
Rutherford	NC	37161	5.60
Sampson	NC	37163	5.80
Scotland	NC	37165	5.80
Stanly	NC	37167	5.60
Stokes	NC	37169	5.40
Surry	NC	37171	5.40
Swain	NC	37173	5.40
Transylvania	NC	37175	5.60
Tyrrell	NC	37177	5.80
Union	NC	37179	5.80
Vance	NC	37181	5.40
Wake	NC	37183	5.60
Warren	NC	37185	5.40
Washington	NC	37187	5.80
Watauga	NC	37189	5.40
Wayne	NC	37191	5.80
Wilkes	NC	37193	5.40
Wilson	NC	37195	5.80
Yadkin	NC	37197	5.40
Yancey	NC	37199	5.40
Adams	ND	38001	2.40
Barnes	ND	38003	2.60
Benson	ND	38005	2.30
Billings	ND	38007	2.40
Bottineau	ND	38009	2.30
Bowman	ND	38011	2.40
Burke	ND	38013	2.30
Burleigh	ND	38015	2.40
Cass	ND	38017	2.70
Cavalier	ND	38019	2.30
Dickey	ND	38021	2.60
Divide	ND	38023	2.30
Dunn	ND	38025	2.40
Eddy	ND	38027	2.40
Emmons	ND	38029	2.40
Foster	ND	38031	2.40
Golden Valley	ND	38033	2.40
Grand Forks	ND	38035	2.30
Grant	ND	38037	2.40
Griggs	ND	38039	2.60
Hettinger	ND	38041	2.40
Kidder	ND	38043	2.40
LaMoure	ND	38045	2.60
Logan	ND	38047	2.40
McHenry	ND	38049	2.30
McIntosh	ND	38051	2.40
McKenzie	ND	38053	2.40

County/parish/city	State	FIPS code	Class I differential adjusted for location
McLean	ND	38055	2.40
Mercer	ND	38057	2.40
Morton	ND	38059	2.40
Mountrail	ND	38061	2.30
Nelson	ND	38063	2.30
Oliver	ND	38065	2.40
Pembina	ND	38067	2.30
Pierce	ND	38069	2.30
Ramsey	ND	38071	2.30
Ransom	ND	38073	2.60
Renville	ND	38075	2.30
Richland	ND	38077	2.60
Rolette	ND	38079	2.30
Sargent	ND	38081	2.60
Sheridan	ND	38083	2.40
Sioux	ND	38085	2.40
Slope	ND	38087	2.40
Stark	ND	38089	2.40
Steele	ND	38091	2.60
Stutsman	ND	38093	2.40
Towner	ND	38095	2.30
Traill	ND	38097	2.60
Walsh	ND	38099	2.30
Ward	ND	38101	2.30
Wells	ND	38103	2.40
Williams	ND	38105	2.30
Adams	NE	31001	2.60
Antelope	NE	31003	2.60
Arthur	NE	31005	2.40
Banner	NE	31007	2.40
Blaine	NE	31009	2.50
Boone	NE	31011	2.60
Box Butte	NE	31013	2.40
Boyd	NE	31015	2.50
Brown	NE	31017	2.50
Buffalo	NE	31019	2.50
Burt	NE	31021	2.60
Butler	NE	31023	2.60
Cass	NE	31025	2.70
Cedar	NE	31027	2.60
Chase	NE	31029	2.50
Cherry	NE	31031	2.40
Cheyenne	NE	31033	2.40
Clay	NE	31035	2.60
Colfax	NE	31037	2.60
Cuming	NE	31039	2.60
Custer	NE	31041	2.50
Dakota	NE	31043	2.60
Dawes	NE	31045	2.40
Dawson	NE	31047	2.50
Deuel	NE	31049	2.40
Dixon	NE	31051	2.60
Dodge	NE	31053	2.60
Douglas	NE	31055	2.70
Dundy	NE	31057	2.50
Fillmore	NE	31059	2.60
Franklin	NE	31061	2.60
Frontier	NE	31063	2.50
Furnas	NE	31065	2.50
Gage	NE	31067	2.70
Garden County	NE	31069	2.40
Garfield	NE	31071	2.50
Gosper	NE	31073	2.50
Grant	NE	31075	2.40
Greeley	NE	31077	2.60
Hall	NE	31079	2.60
Hamilton	NE	31081	2.60
Harlan	NE	31083	2.50
Hayes	NE	31085	2.50
Hitchcock	NE	31087	2.50
Holt	NE	31089	2.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
Hooker	NE	31091	2.40
Howard	NE	31093	2.60
Jefferson	NE	31095	2.60
Johnson	NE	31097	2.70
Kearney	NE	31099	2.60
Keith	NE	31101	2.50
Keya Paha	NE	31103	2.50
Kimball	NE	31105	2.40
Knox	NE	31107	2.60
Lancaster	NE	31109	2.60
Lincoln	NE	31111	2.50
Logan	NE	31113	2.40
Loup	NE	31115	2.50
Madison	NE	31119	2.60
McPherson	NE	31117	2.40
Merrick	NE	31121	2.60
Morrill	NE	31123	2.40
Nance	NE	31125	2.60
Nemaha	NE	31127	2.70
Nuckolls	NE	31129	2.60
Otoe	NE	31131	2.70
Pawnee	NE	31133	2.70
Perkins	NE	31135	2.50
Phelps	NE	31137	2.50
Pierce	NE	31139	2.60
Platte	NE	31141	2.60
Polk	NE	31143	2.60
Red Willow	NE	31145	2.50
Richardson	NE	31147	2.70
Rock	NE	31149	2.50
Saline	NE	31151	2.60
Sarpy	NE	31153	2.70
Saunders	NE	31155	2.60
Scotts Bluff	NE	31157	2.40
Seward	NE	31159	2.60
Sheridan	NE	31161	2.40
Sherman	NE	31163	2.50
Sioux	NE	31165	2.40
Stanton	NE	31167	2.60
Thayer	NE	31169	2.60
Thomas	NE	31171	2.40
Thurston	NE	31173	2.60
Valley	NE	31175	2.50
Washington	NE	31177	2.60
Wayne	NE	31179	2.60
Webster	NE	31181	2.60
Wheeler	NE	31183	2.50
York	NE	31185	2.60
Belknap	NH	33001	4.50
Carroll	NH	33003	4.50
Cheshire	NH	33005	4.50
Coos	NH	33007	4.20
Grafton	NH	33009	4.40
Hillsborough	NH	33011	4.50
Merrimack	NH	33013	4.50
Rockingham	NH	33015	4.50
Strafford	NH	33017	4.50
Sullivan	NH	33019	4.50
Atlantic	NJ	34001	4.80
Bergen	NJ	34003	5.00
Burlington	NJ	34005	4.80
Camden	NJ	34007	4.70
Cape May	NJ	34009	4.80
Cumberland	NJ	34011	4.70
Essex	NJ	34013	5.00
Gloucester	NJ	34015	4.70
Hudson	NJ	34017	5.00
Hunterdon	NJ	34019	4.70
Mercer	NJ	34021	4.70
Middlesex	NJ	34023	4.90
Monmouth	NJ	34025	4.90

County/parish/city	State	FIPS code	Class I differential adjusted for location
Morris	NJ	34027	4.90
Ocean	NJ	34029	4.90
Passaic	NJ	34031	5.00
Salem	NJ	34033	4.70
Somerset	NJ	34035	4.90
Sussex	NJ	34037	4.70
Union	NJ	34039	5.00
Warren	NJ	34041	4.70
Bernalillo	NM	35001	2.40
Catron	NM	35003	2.30
Chaves	NM	35005	2.50
Cibola	NM	35006	2.30
Colfax	NM	35007	2.50
Curry	NM	35009	2.50
DeBaca	NM	35011	2.50
Dona Ana	NM	35013	2.50
Eddy	NM	35015	2.50
Grant	NM	35017	2.50
Guadalupe	NM	35019	2.50
Harding	NM	35021	2.50
Hidalgo	NM	35023	2.50
Lea	NM	35025	2.50
Lincoln	NM	35027	2.50
Los Alamos	NM	35028	2.40
Luna	NM	35029	2.50
McKinley	NM	35031	2.30
Mora	NM	35033	2.50
Otero	NM	35035	2.50
Quay	NM	35037	2.50
Rio Arriba	NM	35039	2.30
Roosevelt	NM	35041	2.50
San Juan	NM	35045	2.30
San Miguel	NM	35047	2.50
Sandoval	NM	35043	2.40
Santa Fe	NM	35049	2.40
Sierra	NM	35051	2.50
Socorro	NM	35053	2.40
Taos	NM	35055	2.50
Torrance	NM	35057	2.40
Union	NM	35059	2.50
Valencia	NM	35061	2.40
Carson City	NV	32510	1.90
Churchill	NV	32001	1.90
Clark	NV	32003	2.60
Douglas	NV	32005	1.80
Elko	NV	32007	2.00
Esmeralda	NV	32009	2.20
Eureka	NV	32011	2.20
Humboldt	NV	32013	1.90
Lander	NV	32015	2.00
Lincoln	NV	32017	2.50
Lyon	NV	32019	1.90
Mineral	NV	32021	2.00
Nye	NV	32023	2.20
Pershing	NV	32027	1.90
Storey	NV	32029	1.90
Washoe	NV	32031	2.00
White Pine	NV	32033	2.20
Albany	NY	36001	4.40
Allegany	NY	36003	3.90
Bronx	NY	36005	5.10
Broome	NY	36007	4.00
Cattaraugus	NY	36009	3.90
Cayuga	NY	36011	3.90
Chautauqua	NY	36013	3.90
Chemung	NY	36015	4.00
Chenango	NY	36017	4.00
Clinton	NY	36019	4.20
Columbia	NY	36021	4.40
Cortland	NY	36023	3.90
Delaware	NY	36025	4.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
Dutchess	NY	36027	4.70
Erie	NY	36029	3.80
Essex	NY	36031	4.20
Franklin	NY	36033	4.10
Fulton	NY	36035	4.10
Genesee	NY	36037	3.80
Greene	NY	36039	4.40
Hamilton	NY	36041	4.10
Herkimer	NY	36043	4.00
Jefferson	NY	36045	4.00
Kings	NY	36047	5.10
Lewis	NY	36049	4.00
Livingston	NY	36051	3.80
Madison	NY	36053	3.90
Monroe	NY	36055	3.80
Montgomery	NY	36057	4.10
Nassau	NY	36059	5.10
New York County	NY	36061	5.10
Niagara	NY	36063	3.80
Oneida	NY	36065	3.90
Onondaga	NY	36067	3.90
Ontario	NY	36069	3.80
Orange	NY	36071	4.70
Orleans	NY	36073	3.80
Oswego	NY	36075	3.90
Otsego	NY	36077	4.10
Putnam	NY	36079	4.70
Queens	NY	36081	5.10
Rensselaer	NY	36083	4.40
Richmond	NY	36085	5.10
Rockland	NY	36087	5.00
Saratoga	NY	36091	4.20
Schenectady	NY	36093	4.20
Schoharie	NY	36095	4.20
Schuyler	NY	36097	3.90
Seneca	NY	36099	3.90
St. Lawrence	NY	36089	4.00
Steuben	NY	36101	3.90
Suffolk	NY	36103	5.10
Sullivan	NY	36105	4.40
Tioga	NY	36107	4.00
Tompkins	NY	36109	3.90
Ulster	NY	36111	4.40
Warren	NY	36113	4.20
Washington	NY	36115	4.20
Wayne	NY	36117	3.80
Westchester	NY	36119	5.00
Wyoming	NY	36121	3.80
Yates	NY	36123	3.80
Adams	OH	39001	4.00
Allen	OH	39003	3.30
Ashland	OH	39005	3.80
Ashtabula	OH	39007	3.80
Athens	OH	39009	4.00
Auglaize	OH	39011	3.60
Belmont	OH	39013	4.00
Brown	OH	39015	4.00
Butler	OH	39017	3.80
Carroll	OH	39019	3.80
Champaign	OH	39021	3.60
Clark	OH	39023	3.60
Clermont	OH	39025	4.00
Clinton	OH	39027	3.80
Columbiana	OH	39029	4.00
Coshocton	OH	39031	3.80
Crawford	OH	39033	3.60
Cuyahoga	OH	39035	3.80
Darke	OH	39037	3.60
Defiance	OH	39039	3.30
Delaware	OH	39041	3.60
Erie	OH	39043	3.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
Fairfield	OH	39045	3.80
Fayette	OH	39047	3.80
Franklin	OH	39049	3.60
Fulton	OH	39051	3.30
Gallia	OH	39053	4.30
Geauga	OH	39055	3.80
Greene	OH	39057	3.60
Guernsey	OH	39059	3.80
Hamilton	OH	39061	3.80
Hancock	OH	39063	3.60
Hardin	OH	39065	3.60
Harrison	OH	39067	3.80
Henry	OH	39069	3.30
Highland	OH	39071	4.00
Hocking	OH	39073	4.00
Holmes	OH	39075	3.80
Huron	OH	39077	3.60
Jackson	OH	39079	4.00
Jefferson	OH	39081	4.00
Knox	OH	39083	3.80
Lake	OH	39085	3.80
Lawrence	OH	39087	4.30
Licking	OH	39089	3.80
Logan	OH	39091	3.60
Lorain	OH	39093	3.80
Lucas	OH	39095	3.30
Madison	OH	39097	3.60
Mahoning	OH	39099	4.00
Marion	OH	39101	3.60
Medina	OH	39103	3.80
Meigs	OH	39105	4.30
Mercer	OH	39107	3.30
Miami	OH	39109	3.60
Monroe	OH	39111	4.00
Montgomery	OH	39113	3.60
Morgan	OH	39115	4.00
Morrow	OH	39117	3.60
Muskingum	OH	39119	3.80
Noble	OH	39121	4.00
Ottawa	OH	39123	3.60
Paulding	OH	39125	3.30
Perry	OH	39127	4.00
Pickaway	OH	39129	3.80
Pike	OH	39131	4.00
Portage	OH	39133	3.80
Preble	OH	39135	3.60
Putnam	OH	39137	3.30
Richland	OH	39139	3.60
Ross	OH	39141	4.00
Sandusky	OH	39143	3.60
Scioto	OH	39145	4.00
Seneca	OH	39147	3.60
Shelby	OH	39149	3.60
Stark	OH	39151	3.80
Summit	OH	39153	3.80
Trumbull	OH	39155	4.00
Tuscarawas	OH	39157	3.80
Union	OH	39159	3.60
Van Wert	OH	39161	3.30
Vinton	OH	39163	4.00
Warren	OH	39165	3.80
Washington	OH	39167	4.00
Wayne	OH	39169	3.80
Williams	OH	39171	3.30
Wood	OH	39173	3.60
Wyandot	OH	39175	3.60
Adair	OK	40001	3.30
Alfalfa	OK	40003	2.60
Atoka	OK	40005	3.60
Beaver	OK	40007	2.50
Beckham	OK	40009	2.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
Blaine	OK	40011	2.90
Bryan	OK	40013	3.60
Caddo	OK	40015	2.90
Canadian	OK	40017	2.90
Carter	OK	40019	3.30
Cherokee	OK	40021	3.30
Choctaw	OK	40023	3.60
Cimarron	OK	40025	2.50
Cleveland	OK	40027	3.30
Coal	OK	40029	3.60
Comanche	OK	40031	2.90
Cotton	OK	40033	3.30
Craig	OK	40035	3.20
Creek	OK	40037	3.30
Custer	OK	40039	2.60
Delaware	OK	40041	3.20
Dewey	OK	40043	2.60
Ellis	OK	40045	2.60
Garfield	OK	40047	2.90
Garvin	OK	40049	3.30
Grady	OK	40051	3.30
Grant	OK	40053	2.90
Greer	OK	40055	2.60
Harmon	OK	40057	2.60
Harper	OK	40059	2.60
Haskell	OK	40061	3.60
Hughes	OK	40063	3.30
Jackson	OK	40065	2.90
Jefferson	OK	40067	3.30
Johnston	OK	40069	3.60
Kay	OK	40071	2.90
Kingfisher	OK	40073	2.90
Kiowa	OK	40075	2.90
Latimer	OK	40077	3.60
Le Flore	OK	40079	3.60
Lincoln	OK	40081	3.30
Logan	OK	40083	3.30
Love	OK	40085	3.30
Major	OK	40093	2.60
Marshall	OK	40095	3.60
Mayes	OK	40097	3.20
McClain	OK	40087	3.30
McCurtain	OK	40089	3.60
McIntosh	OK	40091	3.30
Murray	OK	40099	3.30
Muskogee	OK	40101	3.30
Noble	OK	40103	3.20
Nowata	OK	40105	3.20
Okfuskee	OK	40107	3.30
Oklahoma	OK	40109	3.30
Okmulgee	OK	40111	3.30
Osage	OK	40113	3.20
Ottawa	OK	40115	3.20
Pawnee	OK	40117	3.20
Payne	OK	40119	3.30
Pittsburg	OK	40121	3.60
Pontotoc	OK	40123	3.30
Pottawatomie	OK	40125	3.30
Pushmataha	OK	40127	3.60
Roger Mills	OK	40129	2.60
Rogers	OK	40131	3.20
Seminole	OK	40133	3.30
Sequoyah	OK	40135	3.30
Stephens	OK	40137	3.30
Texas	OK	40139	2.50
Tillman	OK	40141	2.90
Tulsa	OK	40143	3.30
Wagoner	OK	40145	3.30
Washington	OK	40147	3.20
Washita	OK	40149	2.60
Woods	OK	40151	2.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
Woodward	OK	40153	2.60
Baker	OR	41001	2.20
Benton	OR	41003	2.20
Clackamas	OR	41005	2.70
Clatsop	OR	41007	2.20
Columbia	OR	41009	2.20
Coos	OR	41011	2.20
Crook	OR	41013	2.20
Curry	OR	41015	2.20
Deschutes	OR	41017	2.20
Douglas	OR	41019	2.20
Gilliam	OR	41021	2.20
Grant	OR	41023	2.20
Harney	OR	41025	2.20
Hood River	OR	41027	2.20
Jackson	OR	41029	2.20
Jefferson	OR	41031	2.20
Josephine	OR	41033	2.20
Klamath	OR	41035	2.20
Lake	OR	41037	2.20
Lane	OR	41039	2.20
Lincoln	OR	41041	2.20
Linn	OR	41043	2.20
Malheur	OR	41045	1.80
Marion	OR	41047	2.20
Morrow	OR	41049	2.20
Multnomah	OR	41051	2.70
Polk	OR	41053	2.20
Sherman	OR	41055	2.20
Tillamook	OR	41057	2.20
Umatilla	OR	41059	2.20
Union	OR	41061	2.20
Wallowa	OR	41063	2.20
Wasco	OR	41065	2.20
Washington	OR	41067	2.20
Wheeler	OR	41069	2.20
Yamhill	OR	41071	2.20
Adams	PA	42001	4.30
Allegheny	PA	42003	4.00
Armstrong	PA	42005	4.00
Beaver	PA	42007	4.00
Bedford	PA	42009	4.10
Berks	PA	42011	4.30
Blair	PA	42013	4.00
Bradford	PA	42015	4.00
Bucks	PA	42017	4.50
Butler	PA	42019	4.00
Cambria	PA	42021	4.00
Cameron	PA	42023	4.00
Carbon	PA	42025	4.30
Centre	PA	42027	4.00
Chester	PA	42029	4.30
Clarion	PA	42031	4.00
Clearfield	PA	42033	4.00
Clinton	PA	42035	4.00
Columbia	PA	42037	4.10
Crawford	PA	42039	4.00
Cumberland	PA	42041	4.20
Dauphin	PA	42043	4.20
Delaware	PA	42045	4.40
Elk	PA	42047	4.00
Erie	PA	42049	3.90
Fayette	PA	42051	4.00
Forest	PA	42053	4.00
Franklin	PA	42055	4.20
Fulton	PA	42057	4.10
Greene	PA	42059	4.00
Huntingdon	PA	42061	4.10
Indiana	PA	42063	4.00
Jefferson	PA	42065	4.00
Juniata	PA	42067	4.10

County/parish/city	State	FIPS code	Class I differential adjusted for location
Lackawanna	PA	42069	4.30
Lancaster	PA	42071	4.30
Lawrence	PA	42073	4.00
Lebanon	PA	42075	4.20
Lehigh	PA	42077	4.30
Luzerne	PA	42079	4.20
Lycoming	PA	42081	4.10
McKean	PA	42083	3.90
Mercer	PA	42085	4.00
Mifflin	PA	42087	4.10
Monroe	PA	42089	4.40
Montgomery	PA	42091	4.40
Montour	PA	42093	4.10
Northampton	PA	42095	4.40
Northumberland	PA	42097	4.10
Perry	PA	42099	4.20
Philadelphia	PA	42101	4.60
Pike	PA	42103	4.40
Potter	PA	42105	3.90
Schuylkill	PA	42107	4.20
Snyder	PA	42109	4.10
Somerset	PA	42111	4.10
Sullivan	PA	42113	4.10
Susquehanna	PA	42115	4.20
Tioga	PA	42117	4.00
Union	PA	42119	4.10
Venango	PA	42121	4.00
Warren	PA	42123	3.90
Washington	PA	42125	4.00
Wayne	PA	42127	4.30
Westmoreland	PA	42129	4.00
Wyoming	PA	42131	4.20
York	PA	42133	4.30
Bristol	RI	44001	5.10
Kent	RI	44003	5.10
Newport	RI	44005	5.10
Providence	RI	44007	5.10
Washington	RI	44009	5.10
Abbeville	SC	45001	5.80
Aiken	SC	45003	6.00
Allendale	SC	45005	6.00
Anderson	SC	45007	5.60
Bamberg	SC	45009	6.00
Barnwell	SC	45011	6.00
Beaufort	SC	45013	6.00
Berkeley	SC	45015	6.00
Calhoun	SC	45017	6.00
Charleston	SC	45019	6.00
Cherokee	SC	45021	5.60
Chester	SC	45023	5.80
Chesterfield	SC	45025	5.80
Clarendon	SC	45027	6.00
Colleton	SC	45029	6.00
Darlington	SC	45031	6.00
Dillon	SC	45033	6.00
Dorchester	SC	45035	6.00
Edgefield	SC	45037	5.80
Fairfield	SC	45039	5.80
Florence	SC	45041	6.00
Georgetown	SC	45043	6.00
Greenville	SC	45045	5.60
Greenwood	SC	45047	5.80
Hampton	SC	45049	6.00
Horry	SC	45051	6.00
Jasper	SC	45053	6.00
Kershaw	SC	45055	6.00
Lancaster	SC	45057	5.80
Laurens	SC	45059	5.80
Lee	SC	45061	6.00
Lexington	SC	45063	6.00
Marion	SC	45067	6.00

County/parish/city	State	FIPS code	Class I differential adjusted for location
Marlboro	SC	45069	5.80
McCormick	SC	45065	5.80
Newberry	SC	45071	5.80
Oconee	SC	45073	5.60
Orangeburg	SC	45075	6.00
Pickens	SC	45077	5.60
Richland	SC	45079	6.00
Saluda	SC	45081	5.80
Spartanburg	SC	45083	5.60
Sumter	SC	45085	6.00
Union	SC	45087	5.80
Williamsburg	SC	45089	6.00
York	SC	45091	5.60
Aurora	SD	46003	2.60
Beadle	SD	46005	2.60
Bennett	SD	46007	2.40
Bon Homme	SD	46009	2.60
Brookings	SD	46011	2.60
Brown	SD	46013	2.60
Brule	SD	46015	2.50
Buffalo	SD	46017	2.50
Butte	SD	46019	2.40
Campbell	SD	46021	2.50
Charles Mix	SD	46023	2.50
Clark	SD	46025	2.60
Clay	SD	46027	2.60
Codington	SD	46029	2.60
Corson	SD	46031	2.40
Custer	SD	46033	2.40
Davison	SD	46035	2.60
Day	SD	46037	2.60
Deuel	SD	46039	2.60
Dewey	SD	46041	2.40
Douglas	SD	46043	2.60
Edmunds	SD	46045	2.50
Fall River	SD	46047	2.40
Faulk	SD	46049	2.50
Grant	SD	46051	2.60
Gregory	SD	46053	2.50
Haakon	SD	46055	2.40
Hamlin	SD	46057	2.60
Hand	SD	46059	2.50
Hanson	SD	46061	2.60
Harding	SD	46063	2.40
Hughes	SD	46065	2.50
Hutchinson	SD	46067	2.60
Hyde	SD	46069	2.50
Jackson	SD	46071	2.40
Jerauld	SD	46073	2.60
Jones	SD	46075	2.40
Kingsbury	SD	46077	2.60
Lake	SD	46079	2.60
Lawrence	SD	46081	2.40
Lincoln	SD	46083	2.60
Lyman	SD	46085	2.50
Marshall	SD	46091	2.60
McCook	SD	46087	2.60
McPherson	SD	46089	2.50
Meade	SD	46093	2.40
Mellette	SD	46095	2.40
Miner	SD	46097	2.60
Minnehaha	SD	46099	2.60
Moody	SD	46101	2.60
Oglala Lakota	SD	46102	2.40
Pennington	SD	46103	2.40
Perkins	SD	46105	2.40
Potter	SD	46107	2.50
Roberts	SD	46109	2.60
Sanborn	SD	46111	2.60
Spink	SD	46115	2.60
Stanley	SD	46117	2.40

County/parish/city	State	FIPS code	Class I differential adjusted for location
Sully	SD	46119	2.50
Todd	SD	46121	2.40
Tripp	SD	46123	2.50
Turner	SD	46125	2.60
Union	SD	46127	2.60
Walworth	SD	46129	2.50
Yankton	SD	46135	2.60
Ziebach	SD	46137	2.40
Anderson	TN	47001	4.90
Bedford	TN	47003	4.90
Benton	TN	47005	4.60
Bledsoe	TN	47007	4.90
Blount	TN	47009	5.20
Bradley	TN	47011	5.20
Campbell	TN	47013	4.90
Cannon	TN	47015	4.90
Carroll	TN	47017	4.60
Carter	TN	47019	5.20
Cheatham	TN	47021	4.60
Chester	TN	47023	4.60
Claiborne	TN	47025	4.90
Clay	TN	47027	4.60
Cocke	TN	47029	5.20
Coffee	TN	47031	4.90
Crockett	TN	47033	4.30
Cumberland	TN	47035	4.90
Davidson	TN	47037	4.60
Decatur	TN	47039	4.60
DeKalb	TN	47041	4.90
Dickson	TN	47043	4.60
Dyer	TN	47045	4.30
Fayette	TN	47047	4.60
Fentress	TN	47049	4.60
Franklin	TN	47051	5.20
Gibson	TN	47053	4.30
Giles	TN	47055	4.90
Grainger	TN	47057	4.90
Greene	TN	47059	5.20
Grundy	TN	47061	4.90
Hamblen	TN	47063	5.20
Hamilton	TN	47065	5.20
Hancock	TN	47067	4.90
Hardeman	TN	47069	4.60
Hardin	TN	47071	4.90
Hawkins	TN	47073	5.20
Haywood	TN	47075	4.60
Henderson	TN	47077	4.60
Henry	TN	47079	4.30
Hickman	TN	47081	4.60
Houston	TN	47083	4.60
Humphreys	TN	47085	4.60
Jackson	TN	47087	4.60
Jefferson	TN	47089	5.20
Johnson	TN	47091	5.20
Knox	TN	47093	4.90
Lake	TN	47095	4.30
Lauderdale	TN	47097	4.30
Lawrence	TN	47099	4.90
Lewis	TN	47101	4.90
Lincoln	TN	47103	5.20
Loudon	TN	47105	5.20
Macon	TN	47111	4.60
Madison	TN	47113	4.60
Marion	TN	47115	5.20
Marshall	TN	47117	4.90
Maury	TN	47119	4.90
McMinn	TN	47107	5.20
McNairy	TN	47109	4.90
Meigs	TN	47121	5.20
Monroe	TN	47123	5.20
Montgomery	TN	47125	4.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
Moore	TN	47127	4.90
Morgan	TN	47129	4.90
Obion	TN	47131	4.30
Overton	TN	47133	4.60
Perry	TN	47135	4.60
Pickett	TN	47137	4.60
Polk	TN	47139	5.40
Putnam	TN	47141	4.60
Rhea	TN	47143	4.90
Roane	TN	47145	4.90
Robertson	TN	47147	4.60
Rutherford	TN	47149	4.60
Scott	TN	47151	4.90
Sequatchie	TN	47153	5.20
Sevier	TN	47155	5.20
Shelby	TN	47157	4.60
Smith	TN	47159	4.60
Stewart	TN	47161	4.30
Sullivan	TN	47163	5.20
Sumner	TN	47165	4.60
Tipton	TN	47167	4.60
Trousdale	TN	47169	4.60
Unicoi	TN	47171	5.40
Union	TN	47173	4.90
Van Buren	TN	47175	4.90
Warren	TN	47177	4.90
Washington	TN	47179	5.20
Wayne	TN	47181	4.90
Weakley	TN	47183	4.30
White	TN	47185	4.90
Williamson	TN	47187	4.60
Wilson	TN	47189	4.60
Anderson	TX	48001	4.00
Andrews	TX	48003	2.90
Angelina	TX	48005	4.60
Aransas	TX	48007	4.60
Archer	TX	48009	3.30
Armstrong	TX	48011	2.50
Atascosa	TX	48013	4.30
Austin	TX	48015	4.30
Bailey	TX	48017	2.50
Bandera	TX	48019	4.00
Bastrop	TX	48021	4.30
Baylor	TX	48023	2.90
Bee	TX	48025	4.60
Bell	TX	48027	4.00
Bexar	TX	48029	4.30
Blanco	TX	48031	4.00
Borden	TX	48033	2.90
Bosque	TX	48035	3.60
Bowie	TX	48037	4.00
Brazoria	TX	48039	4.80
Brazos	TX	48041	4.30
Brewster	TX	48043	3.30
Briscoe	TX	48045	2.50
Brooks	TX	48047	4.60
Brown	TX	48049	3.60
Burleson	TX	48051	4.30
Burnet	TX	48053	4.00
Caldwell	TX	48055	4.30
Calhoun	TX	48057	4.60
Callahan	TX	48059	3.30
Cameron	TX	48061	4.60
Camp	TX	48063	3.70
Carson	TX	48065	2.50
Cass	TX	48067	4.00
Castro	TX	48069	2.50
Chambers	TX	48071	4.80
Cherokee	TX	48073	4.00
Childress	TX	48075	2.60
Clay	TX	48077	3.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
Cochran	TX	48079	2.50
Coke	TX	48081	3.30
Coleman	TX	48083	3.60
Collin	TX	48085	3.70
Collingsworth	TX	48087	2.60
Colorado	TX	48089	4.30
Comal	TX	48091	4.00
Comanche	TX	48093	3.60
Concho	TX	48095	3.60
Cooke	TX	48097	3.30
Coryell	TX	48099	4.00
Cottle	TX	48101	2.60
Crane	TX	48103	2.90
Crockett	TX	48105	3.30
Crosby	TX	48107	2.60
Culberson	TX	48109	2.90
Dallam	TX	48111	2.50
Dallas	TX	48113	3.70
Dawson	TX	48115	2.90
Deaf Smith	TX	48117	2.50
Delta	TX	48119	3.70
Denton	TX	48121	3.70
DeWitt	TX	48123	4.30
Dickens	TX	48125	2.60
Dimmit	TX	48127	4.00
Donley	TX	48129	2.50
Duval	TX	48131	4.60
Eastland	TX	48133	3.60
Ector	TX	48135	2.90
Edwards	TX	48137	3.60
El Paso	TX	48141	2.70
Ellis	TX	48139	3.70
Erath	TX	48143	3.60
Falls	TX	48145	4.00
Fannin	TX	48147	3.70
Fayette	TX	48149	4.30
Fisher	TX	48151	2.90
Floyd	TX	48153	2.60
Foard	TX	48155	2.90
Fort Bend	TX	48157	4.60
Franklin	TX	48159	3.70
Freestone	TX	48161	4.00
Frio	TX	48163	4.30
Gaines	TX	48165	2.60
Galveston	TX	48167	4.80
Garza	TX	48169	2.90
Gillespie	TX	48171	4.00
Glasscock	TX	48173	3.30
Goliad	TX	48175	4.60
Gonzales	TX	48177	4.30
Gray	TX	48179	2.50
Grayson	TX	48181	3.70
Gregg	TX	48183	4.00
Grimes	TX	48185	4.60
Guadalupe	TX	48187	4.30
Hale	TX	48189	2.50
Hall	TX	48191	2.50
Hamilton	TX	48193	3.60
Hansford	TX	48195	2.50
Hardeman	TX	48197	2.90
Hardin	TX	48199	4.80
Harris	TX	48201	4.80
Harrison	TX	48203	4.00
Hartley	TX	48205	2.50
Haskell	TX	48207	2.90
Hays	TX	48209	4.00
Hemphill	TX	48211	2.60
Henderson	TX	48213	3.70
Hidalgo	TX	48215	4.60
Hill	TX	48217	3.70
Hockley	TX	48219	2.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
Hood	TX	48221	3.70
Hopkins	TX	48223	3.70
Houston	TX	48225	4.00
Howard	TX	48227	2.90
Hudspeth	TX	48229	2.70
Hunt	TX	48231	3.70
Hutchinson	TX	48233	2.50
Irion	TX	48235	3.30
Jack	TX	48237	3.30
Jackson	TX	48239	4.60
Jasper	TX	48241	4.80
Jeff Davis	TX	48243	2.90
Jefferson	TX	48245	4.80
Jim Hogg	TX	48247	4.60
Jim Wells	TX	48249	4.60
Johnson	TX	48251	3.70
Jones	TX	48253	3.30
Karnes	TX	48255	4.30
Kaufman	TX	48257	3.70
Kendall	TX	48259	4.00
Kenedy	TX	48261	4.60
Kent	TX	48263	2.90
Kerr	TX	48265	4.00
Kimble	TX	48267	3.60
King	TX	48269	2.90
Kinney	TX	48271	4.00
Kleberg	TX	48273	4.60
Knox	TX	48275	2.90
La Salle	TX	48283	4.30
Lamar	TX	48277	3.70
Lamb	TX	48279	2.50
Lampasas	TX	48281	4.00
Lavaca	TX	48285	4.30
Lee	TX	48287	4.30
Leon	TX	48289	4.00
Liberty	TX	48291	4.80
Limestone	TX	48293	4.00
Lipscomb	TX	48295	2.60
Live Oak	TX	48297	4.30
Llano	TX	48299	4.00
Loving	TX	48301	2.90
Lubbock	TX	48303	2.60
Lynn	TX	48305	2.90
Madison	TX	48313	4.00
Marion	TX	48315	4.00
Martin	TX	48317	2.90
Mason	TX	48319	3.60
Matagorda	TX	48321	4.80
Maverick	TX	48323	4.00
McCulloch	TX	48307	3.60
McLennan	TX	48309	4.00
McMullen	TX	48311	4.30
Medina	TX	48325	4.00
Menard	TX	48327	3.60
Midland	TX	48329	2.90
Milam	TX	48331	4.00
Mills	TX	48333	3.60
Mitchell	TX	48335	3.30
Montague	TX	48337	3.30
Montgomery	TX	48339	4.80
Moore	TX	48341	2.50
Morris	TX	48343	3.70
Motley	TX	48345	2.60
Nacogdoches	TX	48347	4.00
Navarro	TX	48349	3.70
Newton	TX	48351	4.80
Nolan	TX	48353	3.30
Nueces	TX	48355	4.60
Ochiltree	TX	48357	2.50
Oldham	TX	48359	2.50
Orange	TX	48361	4.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
Palo Pinto	TX	48363	3.30
Panola	TX	48365	4.00
Parker	TX	48367	3.70
Parmer	TX	48369	2.50
Pecos	TX	48371	3.30
Polk	TX	48373	4.60
Potter	TX	48375	2.50
Presidio	TX	48377	2.90
Rains	TX	48379	3.70
Randall	TX	48381	2.50
Reagan	TX	48383	3.30
Real	TX	48385	4.00
Red River	TX	48387	3.70
Reeves	TX	48389	2.90
Refugio	TX	48391	4.60
Roberts	TX	48393	2.50
Robertson	TX	48395	4.00
Rockwall	TX	48397	3.70
Runnels	TX	48399	3.30
Rusk	TX	48401	4.00
Sabine	TX	48403	4.60
San Augustine	TX	48405	4.60
San Jacinto	TX	48407	4.60
San Patricio	TX	48409	4.60
San Saba	TX	48411	3.60
Schleicher	TX	48413	3.60
Scurry	TX	48415	2.90
Shackelford	TX	48417	3.30
Shelby	TX	48419	4.60
Sherman	TX	48421	2.50
Smith	TX	48423	3.70
Somervell	TX	48425	3.70
Starr	TX	48427	4.60
Stephens	TX	48429	3.30
Sterling	TX	48431	3.30
Stonewall	TX	48433	2.90
Sutton	TX	48435	3.60
Swisher	TX	48437	2.50
Tarrant	TX	48439	3.70
Taylor	TX	48441	3.30
Terrell	TX	48443	3.30
Terry	TX	48445	2.60
Throckmorton	TX	48447	3.30
Titus	TX	48449	3.70
Tom Green	TX	48451	3.30
Travis	TX	48453	4.00
Trinity	TX	48455	4.60
Tyler	TX	48457	4.80
Upshur	TX	48459	3.70
Upton	TX	48461	3.30
Uvalde	TX	48463	4.00
Val Verde	TX	48465	3.60
Van Zandt	TX	48467	3.70
Victoria	TX	48469	4.60
Walker	TX	48471	4.60
Waller	TX	48473	4.60
Ward	TX	48475	2.90
Washington	TX	48477	4.30
Webb	TX	48479	4.30
Wharton	TX	48481	4.60
Wheeler	TX	48483	2.60
Wichita	TX	48485	2.90
Wilbarger	TX	48487	2.90
Willacy	TX	48489	4.60
Williamson	TX	48491	4.00
Wilson	TX	48493	4.30
Winkler	TX	48495	2.90
Wise	TX	48497	3.30
Wood	TX	48499	3.70
Yoakum	TX	48501	2.60
Young	TX	48503	3.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
Zapata	TX	48505	4.30
Zavala	TX	48507	4.00
Beaver	UT	49001	2.40
Box Elder	UT	49003	2.00
Cache	UT	49005	2.20
Carbon	UT	49007	2.20
Daggett	UT	49009	2.30
Davis	UT	49011	2.20
Duchesne	UT	49013	2.20
Emery	UT	49015	2.30
Garfield	UT	49017	2.30
Grand	UT	49019	2.30
Iron	UT	49021	2.40
Juab	UT	49023	2.20
Kane	UT	49025	2.40
Millard	UT	49027	2.30
Morgan	UT	49029	2.20
Piute	UT	49031	2.30
Rich	UT	49033	2.20
Salt Lake	UT	49035	2.20
San Juan	UT	49037	2.30
Sanpete	UT	49039	2.20
Sevier	UT	49041	2.30
Summit	UT	49043	2.20
Tooele	UT	49045	2.20
Uintah	UT	49047	2.30
Utah	UT	49049	2.20
Wasatch	UT	49051	2.20
Washington	UT	49053	2.50
Wayne	UT	49055	2.30
Weber	UT	49057	2.20
Accomack	VA	51001	4.80
Albemarle	VA	51003	4.50
Alexandria City	VA	51510	4.50
Alleghany	VA	51005	4.50
Amelia	VA	51007	4.80
Amherst	VA	51009	4.50
Appomattox	VA	51011	4.80
Arlington	VA	51013	4.60
Augusta	VA	51015	4.30
Bath	VA	51017	4.50
Bedford	VA	51019	4.80
Bland	VA	51021	4.80
Botetourt	VA	51023	4.80
Bristol City	VA	51520	5.20
Brunswick	VA	51025	5.20
Buchanan	VA	51027	4.80
Buckingham	VA	51029	4.80
Buena Vista City	VA	51530	4.50
Campbell	VA	51031	4.80
Caroline	VA	51033	4.80
Carroll	VA	51035	5.20
Charles City	VA	51036	5.20
Charlotte	VA	51037	4.80
Charlottesville	VA	51540	4.50
Chesapeake City	VA	51550	5.20
Chesterfield	VA	51041	4.80
Clarke	VA	51043	4.30
Colonial Heights	VA	51570	4.80
Covington	VA	51580	4.50
Craig	VA	51045	4.80
Culpeper	VA	51047	4.50
Cumberland	VA	51049	4.80
Danville City	VA	51590	5.20
Dickenson	VA	51051	4.80
Dinwiddie	VA	51053	5.20
Emporia	VA	51595	5.20
Essex	VA	51057	4.80
Fairfax	VA	51059	4.60
Fairfax City	VA	51600	4.50
Falls Church City	VA	51610	4.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
Fauquier	VA	51061	4.50
Floyd	VA	51063	5.20
Fluvanna	VA	51065	4.50
Franklin City	VA	51620	5.20
Franklin County	VA	51067	4.80
Frederick	VA	51069	4.30
Fredericksburg City	VA	51630	4.50
Galax City	VA	51640	5.20
Giles	VA	51071	4.80
Gloucester	VA	51073	5.20
Goochland	VA	51075	4.80
Grayson	VA	51077	5.20
Greene	VA	51079	4.50
Greensville	VA	51081	5.20
Halifax	VA	51083	5.20
Hampton City	VA	51650	5.20
Hanover	VA	51085	4.80
Harrisonburg	VA	51660	4.30
Henrico	VA	51087	4.80
Henry	VA	51089	5.20
Highland	VA	51091	4.30
Hopewell	VA	51670	5.20
Isle of Wight	VA	51093	5.20
James City	VA	51095	5.20
King and Queen	VA	51097	4.80
King George	VA	51099	4.80
King William	VA	51101	4.80
Lancaster	VA	51103	5.20
Lee	VA	51105	4.80
Lexington	VA	51678	4.50
Loudoun	VA	51107	4.40
Louisa	VA	51109	4.50
Lunenburg	VA	51111	5.20
Lynchburg City	VA	51680	4.80
Madison	VA	51113	4.50
Manassas	VA	51683	4.50
Manassas Park	VA	51685	4.50
Martinsville City	VA	51690	5.20
Mathews	VA	51115	5.20
Mecklenburg	VA	51117	5.20
Middlesex	VA	51119	5.20
Montgomery	VA	51121	4.80
Nelson	VA	51125	4.50
New Kent	VA	51127	5.20
Newport News City	VA	51700	5.20
Norfolk City	VA	51710	5.20
Northampton	VA	51131	4.80
Northumberland	VA	51133	4.80
Norton City	VA	51720	4.80
Nottoway	VA	51135	4.80
Orange	VA	51137	4.50
Page	VA	51139	4.30
Patrick	VA	51141	5.20
Petersburg City	VA	51730	5.20
Pittsylvania	VA	51143	5.20
Poquoson City	VA	51735	5.20
Portsmouth City	VA	51740	5.20
Powhatan	VA	51145	4.80
Prince Edward	VA	51147	4.80
Prince George	VA	51149	5.20
Prince William	VA	51153	4.50
Pulaski	VA	51155	4.80
Radford City	VA	51750	4.80
Rappahannock	VA	51157	4.50
Richmond City	VA	51760	4.80
Richmond County	VA	51159	4.80
Roanoke	VA	51161	4.80
Roanoke City	VA	51770	4.80
Rockbridge	VA	51163	4.50
Rockingham	VA	51165	4.30
Russell	VA	51167	4.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
Salem City	VA	51775	4.80
Scott	VA	51169	4.80
Shenandoah	VA	51171	4.30
Smyth	VA	51173	5.20
Southampton	VA	51175	5.20
Spotsylvania	VA	51177	4.50
Stafford	VA	51179	4.50
Staunton	VA	51790	4.30
Suffolk City	VA	51800	5.20
Surry	VA	51181	5.20
Sussex	VA	51183	5.20
Tazewell	VA	51185	4.80
Virginia Beach City	VA	51810	5.20
Warren	VA	51187	4.30
Washington	VA	51191	5.20
Waynesboro	VA	51820	4.30
Westmoreland	VA	51193	4.80
Williamsburg	VA	51830	5.20
Winchester City	VA	51840	4.30
Wise	VA	51195	4.80
Wythe	VA	51197	5.20
York	VA	51199	5.20
Addison	VT	50001	4.30
Bennington	VT	50003	4.50
Caledonia	VT	50005	4.30
Chittenden	VT	50007	4.30
Essex	VT	50009	4.20
Franklin	VT	50011	4.20
Grand Isle	VT	50013	4.20
Lamoille	VT	50015	4.30
Orange	VT	50017	4.30
Orleans	VT	50019	4.20
Rutland	VT	50021	4.30
Washington	VT	50023	4.30
Windham	VT	50025	4.50
Windsor	VT	50027	4.50
Adams	WA	53001	2.20
Asotin	WA	53003	2.20
Benton	WA	53005	2.20
Chelan	WA	53007	2.40
Clallam	WA	53009	2.40
Clark	WA	53011	2.70
Columbia	WA	53013	2.20
Cowlitz	WA	53015	2.40
Douglas	WA	53017	2.40
Ferry	WA	53019	2.40
Franklin	WA	53021	2.20
Garfield	WA	53023	2.20
Grant	WA	53025	2.20
Grays Harbor	WA	53027	2.40
Island	WA	53029	2.40
Jefferson	WA	53031	2.40
King	WA	53033	2.70
Kitsap	WA	53035	2.40
Kittitas	WA	53037	2.40
Klickitat	WA	53039	2.20
Lewis	WA	53041	2.40
Lincoln	WA	53043	2.40
Mason	WA	53045	2.40
Okanogan	WA	53047	2.40
Pacific	WA	53049	2.40
Pend Oreille	WA	53051	2.40
Pierce	WA	53053	2.40
San Juan	WA	53055	2.40
Skagit	WA	53057	2.40
Skamania	WA	53059	2.40
Snohomish	WA	53061	2.40
Spokane	WA	53063	2.40
Stevens	WA	53065	2.40
Thurston	WA	53067	2.40
Wahkiakum	WA	53069	2.40

County/parish/city	State	FIPS code	Class I differential adjusted for location
Walla Walla	WA	53071	2.20
Whatcom	WA	53073	2.40
Whitman	WA	53075	2.20
Yakima	WA	53077	2.20
Adams	WI	55001	2.90
Ashland	WI	55003	2.80
Barron	WI	55005	2.80
Bayfield	WI	55007	2.80
Brown	WI	55009	2.90
Buffalo	WI	55011	2.80
Burnett	WI	55013	2.80
Calumet	WI	55015	2.90
Chippewa	WI	55017	2.80
Clark	WI	55019	2.80
Columbia	WI	55021	2.90
Crawford	WI	55023	2.90
Dane	WI	55025	2.90
Dodge	WI	55027	2.90
Door	WI	55029	2.90
Douglas	WI	55031	2.80
Dunn	WI	55033	2.80
Eau Claire	WI	55035	2.80
Florence	WI	55037	2.80
Fond du Lac	WI	55039	2.90
Forest	WI	55041	2.80
Grant	WI	55043	2.90
Green	WI	55045	2.90
Green Lake	WI	55047	2.90
Iowa	WI	55049	2.90
Iron	WI	55051	2.80
Jackson	WI	55053	2.80
Jefferson	WI	55055	2.90
Juneau	WI	55057	2.90
Kenosha	WI	55059	3.10
Kewaunee	WI	55061	2.90
La Crosse	WI	55063	2.90
Lafayette	WI	55065	2.90
Langlade	WI	55067	2.90
Lincoln	WI	55069	2.80
Manitowoc	WI	55071	2.90
Marathon	WI	55073	2.90
Marinette	WI	55075	2.90
Marquette	WI	55077	2.90
Menominee	WI	55078	2.90
Milwaukee	WI	55079	3.10
Monroe	WI	55081	2.90
Oconto	WI	55083	2.90
Oneida	WI	55085	2.80
Outagamie	WI	55087	2.90
Ozaukee	WI	55089	3.10
Pepin	WI	55091	2.80
Pierce	WI	55093	2.80
Polk	WI	55095	2.80
Portage	WI	55097	2.90
Price	WI	55099	2.80
Racine	WI	55101	3.10
Richland	WI	55103	2.90
Rock	WI	55105	2.90
Rusk	WI	55107	2.80
Sauk	WI	55111	2.90
Sawyer	WI	55113	2.80
Shawano	WI	55115	2.90
Sheboygan	WI	55117	2.90
St. Croix	WI	55109	2.80
Taylor	WI	55119	2.80
Trempealeau	WI	55121	2.80
Vernon	WI	55123	2.90
Vilas	WI	55125	2.80
Walworth	WI	55127	3.10
Washburn	WI	55129	2.80
Washington	WI	55131	2.90

County/parish/city	State	FIPS code	Class I differential adjusted for location
Waukesha	WI	55133	2.90
Waupaca	WI	55135	2.90
Waushara	WI	55137	2.90
Winnebago	WI	55139	2.90
Wood	WI	55141	2.90
Barbour	WV	54001	4.30
Berkeley	WV	54003	4.30
Boone	WV	54005	4.50
Braxton	WV	54007	4.30
Brooke	WV	54009	4.00
Cabell	WV	54011	4.50
Calhoun	WV	54013	4.30
Clay	WV	54015	4.50
Doddridge	WV	54017	4.30
Fayette	WV	54019	4.50
Gilmer	WV	54021	4.30
Grant	WV	54023	4.30
Greenbrier	WV	54025	4.50
Hampshire	WV	54027	4.30
Hancock	WV	54029	4.00
Hardy	WV	54031	4.30
Harrison	WV	54033	4.30
Jackson	WV	54035	4.30
Jefferson	WV	54037	4.30
Kanawha	WV	54039	4.50
Lewis	WV	54041	4.30
Lincoln	WV	54043	4.50
Logan	WV	54045	4.50
Marion	WV	54049	4.00
Marshall	WV	54051	4.00
Mason	WV	54053	4.30
McDowell	WV	54047	4.80
Mercer	WV	54055	4.80
Mineral	WV	54057	4.10
Mingo	WV	54059	4.50
Monongalia	WV	54061	4.10
Monroe	WV	54063	4.80
Morgan	WV	54065	4.30
Nicholas	WV	54067	4.50
Ohio	WV	54069	4.00
Pendleton	WV	54071	4.30
Pleasants	WV	54073	4.00
Pocahontas	WV	54075	4.50
Preston	WV	54077	4.10
Putnam	WV	54079	4.50
Raleigh	WV	54081	4.50
Randolph	WV	54083	4.30
Ritchie	WV	54085	4.30
Roane	WV	54087	4.30
Summers	WV	54089	4.80
Taylor	WV	54091	4.30
Tucker	WV	54093	4.30
Tyler	WV	54095	4.00
Upshur	WV	54097	4.30
Wayne	WV	54099	4.50
Webster	WV	54101	4.50
Wetzel	WV	54103	4.00
Wirt	WV	54105	4.30
Wood	WV	54107	4.00
Wyoming	WV	54109	4.80
Albany	WY	56001	2.40
Big Horn	WY	56003	2.40
Campbell	WY	56005	2.40
Carbon	WY	56007	2.40
Converse	WY	56009	2.40
Crook	WY	56011	2.40
Fremont	WY	56013	2.40
Goshen	WY	56015	2.40
Hot Springs	WY	56017	2.40
Johnson	WY	56019	2.40
Laramie	WY	56021	2.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
Lincoln	WY	56023	2.20
Natrona	WY	56025	2.40
Niobrara	WY	56027	2.40
Park	WY	56029	2.20
Platte	WY	56031	2.40
Sheridan	WY	56033	2.40
Sublette	WY	56035	2.20
Sweetwater	WY	56037	2.40
Teton	WY	56039	2.20
Uinta	WY	56041	2.20
Washakie	WY	56043	2.40
Weston	WY	56045	2.40

■ 5. Amend § 1000.76 by removing the words ''and § 1135.11 of this chapter'' wherever they appear and by revising and republishing paragraphs (a)(2) through (4) and paragraph (c) to read as follows:

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(2) For orders with multiple component pricing, compute a Class I differential price by subtracting Class III price from the current month's applicable Class I price. Multiply the pounds remaining after the computation in paragraph (a)(1)(iii) of this section by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders with skim milk and butterfat pricing, multiply the remaining pounds by the amount by which the applicable Class I price exceeds the uniform price, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I price nor the adjusted uniform price differential shall be less than the lowest announced class price; and

(4) Unless the payment option described in paragraph (d) of this section is selected, add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) of this section by any positive difference between the applicable Class I price at the location of the partially regulated distributing plant (less $1.00 if the reconstituted milk is labeled as such) and the Class IV price.

* * * * *

(c) The operator of a partially regulated distributing plant that is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25th day after the end of the month (except as provided in § 1000.90) to the market administrator for the producer-settlement fund an amount computed as follows: after completing the computations described in paragraphs (a)(1)(i) and (ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the applicable Federal order Class I price at the location of the plant.

* * * * *

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

■ 6. The authority citation for part 1001 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 7. Amend § 1001.60 by:

■ a. Revising the introductory paragraph;

■ b. Redesignating paragraph (i) as paragraph (j); and

■ c. Adding new paragraph (i).

The revision and addition read as follows:

§ 1001.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(i) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1005—MILK IN THE APPLACHIAN MARKETING AREA

■ 8. The authority citation for part 1005 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 9. Amend § 1005.51 by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 1005.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52 of this chapter. The Class I price shall be the price computed pursuant to § 1000.50(a) of

this chapter for Mecklenburg County, North Carolina.

(b) [Reserved]

■ 10. Amend § 1005.60 by:

■ a. Revising the introductory paragraph and paragraph (a);

■ b. Removing paragraph (g);

■ c. Redesignating paragraph (f) as paragraph (g); and

■ d. Adding new paragraph (f).

The revisions and addition read as follows:

§ 1005.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (f) of this section and subtracting from that total amount the value computed in paragraph (g) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) of this chapter by the applicable skim milk and butterfat prices, and add the resulting amounts;

* * * * *

(f) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 11. The authority citation for part 1006 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 12. Amend § 1006.51 by revising paragraph (a), removing and reserving paragraph (b), and removing paragraph (c) to read as follows:

§ 1006.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 1000.52 of this chapter. The Class I price shall be the price computed pursuant to § 1000.50(a) of this chapter for Hillsborough County, Florida.

(b) [Reserved]

■ 13. Amend § 1006.60 by:

■ a. Revising the introductory paragraph and paragraph (a);

■ b. Removing paragraphs (g) through (i);

■ c. Redesignating paragraph (f) as paragraph (g); and

■ d. Adding new paragraph (f).

The revisions and addition read as follows:

§ 1006.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (f) of this section and subtracting from that total amount the value computed in paragraph (g) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) of this chapter by the applicable skim milk and butterfat prices, and add the resulting amounts;

* * * * *

(f) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 14. The authority citation for part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 15. Amend § 1007.51 by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 1007.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52 of this chapter. The Class I price shall be the price computed pursuant to § 1000.50(a) of this chapter for Fulton County, Georgia.

(b) [Reserved]

■ 16. Amend § 1007.60 by:

■ a. Revising the introductory paragraph and paragraph (a);

■ b. Removing paragraph (g);

■ c. Redesignating paragraph (f) as paragraph (g); and

■ d. Adding new paragraph (f).

The revisions and addition read as follows:

§ 1007.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (f) of this section and subtracting from that total amount the value computed in paragraph (g) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) of this chapter by the applicable skim milk and butterfat prices, and add the resulting amounts;

* * * * *

(f) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

■ 17. The authority citation for part 1030 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 18. Amend § 1030.60 by:

■ a. Revising the introductory paragraph;

■ b. Redesignating paragraphs (j) and (k) as paragraphs (k) and (l); and

■ c. Adding new paragraph (j).

The revision and addition read as follows:

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk,

the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (j) of this section and subtracting from that total amount the values computed in paragraphs (k) and (l) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(j) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

■ 19. The authority citation for part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 20. Amend § 1032.60 by:
■ a. Revising the introductory paragraph;
■ b. Redesignating paragraph (j) as paragraph (k); and
■ c. Adding new paragraph (j).

The revision and addition read as follows:

§ 1032.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (j) of this section and subtracting from that total amount the value computed in paragraph (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(j) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

■ 21. The authority citation for part 1033 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 22. Amend § 1033.60 by:
■ a. Revising the introductory paragraph;
■ b. Redesignating paragraph (j) as paragraph (k); and
■ c. Adding new paragraph (j).

The revision and addition read as follows:

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (j) of this section and subtracting from that total amount the value computed in paragraph (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(j) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1051—MILK IN THE CALIFORNIA MARKETING AREA

■ 23. The authority citation for part 1051 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 24. Amend § 1051.60 by:
■ a. Revising the introductory paragraph;
■ b. Redesignating paragraph (i) as paragraph (j); and
■ c. Adding new paragraph (i).

The revision and addition read as follows:

§ 1051.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(i) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this

chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ 25. The authority citation for part 1124 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 26. Amend § 1124.60 by:
■ a. Revising the introductory paragraph;
■ b. Redesignating paragraph (i) as paragraph (j); and
■ c. Adding new paragraph (i).

The revision and addition read as follows:

§ 1124.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(i) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

■ 27. The authority citation for part 1126 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 28. Amend § 1126.60 by:
■ a. Revising the introductory paragraph;
■ b. Redesignating paragraph (j) as paragraph (k); and
■ c. Adding new paragraph (j).

The revision and addition read as follows:

§ 1126.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (j) of this section and subtracting from that total amount the value computed in paragraph (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(j) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1131—MILK IN THE ARIZONA MARKETING AREA

■ 29. The authority citation for part 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 30. Amend § 1131.60 by:
■ a. Revising the introductory paragraph;
■ b. Redesignating paragraph (f) as paragraph (g); and
■ c. Adding new paragraph (f).

The revision and addition read as follows:

§ 1131.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (f) of this section and subtracting from that total amount the value computed in paragraph (g) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(f) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–14769 Filed 7–12–24; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL REGISTER

Vol. 89 Monday,
No. 135 July 15, 2024

Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Implementation of Dynamic Line Ratings; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM24–6–000]

Implementation of Dynamic Line Ratings

AGENCY: Federal Energy Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an advance notice of proposed rulemaking presenting potential reforms to implement dynamic line ratings and, thereby, improve the accuracy of transmission line ratings. These potential reforms would require transmission line ratings to reflect solar heating based on the sun's position and forecastable cloud cover and require transmission line ratings to reflect forecasts of wind conditions on certain transmission lines. The potential reforms would also ensure transparency in the development and implementation of dynamic line ratings and enhance data reporting practices related to congestion in non-regional transmission organization/independent system operator regions to identify candidate transmission lines for the requirement to reflect forecasts of wind conditions. The Commission invites all interested persons to submit comments on the potential reforms and in response to specific questions.

DATES: Comments are due October 15, 2024 and Reply Comments are due November 12, 2024.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

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Lisa Sosna (Technical Information), Office of Energy Policy and Innovation, 888 First Street NE, Washington, DC 20426, (202) 502–6597, *Lisa.Sosna@ferc.gov*

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SUPPLEMENTARY INFORMATION:

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I. Introduction

1. In this advance notice of proposed rulemaking (ANOPR), the Federal Energy Regulatory Commission (Commission), pursuant to its authority under section 206 of the Federal Power Act (FPA),[1] is considering the need to establish requirements for transmission providers to use dynamic line ratings to improve the accuracy of transmission line ratings. Dynamic line ratings, or DLRs, are transmission line ratings that reflect up-to-date forecasts of weather conditions, such as ambient air temperature, wind, cloud cover, solar heating, and precipitation, in addition to transmission line conditions such as tension or sag.[2] The Commission is also considering reforms to ensure transparency in the development and implementation of dynamic line ratings.

2. In 2021, the Commission issued Order No. 881, to revise its *pro forma* Open Access Transmission Tariff (OATT) and the Commission's regulations to improve the accuracy and transparency of transmission line ratings.[3] Specifically, the Commission found that the use of only seasonal and static temperature assumptions in developing transmission line ratings would result in transmission line ratings that do not accurately represent the transfer capability of the transmission system.[4] The Commission found that inaccurate transmission line ratings result in unjust and unreasonable Commission-jurisdictional rates.[5]

3. Building upon past Commission actions designed to improve the accuracy and transparency of transmission line ratings, this ANOPR raises questions and explores potential reforms to further enhance transmission line ratings and congestion reporting practices. We preliminarily propose and seek comment on a DLR framework for reforms to improve the accuracy of transmission line ratings and ensure transparency in the development and implementation of transmission line ratings. These potential DLR reforms would require transmission line ratings to reflect the impacts of solar heating by considering the sun's position and forecastable cloud cover. They would also require transmission line ratings to reflect forecasts of wind conditions—wind speed and wind direction—on certain transmission lines. The potential reforms also would enhance data reporting practices related to congestion in non-regional transmission organization (RTO)/independent system operator (ISO) regions to identify candidate transmission lines for any wind requirement. We seek comment on this framework and whether any reforms to alter the requirements for transmission line ratings are needed to ensure rates for Commission-jurisdictional service are just and

[1] 16 U.S.C. 824e.

[2] *See, e.g.,* 18 CFR 35.28(b)(14).

[3] *Managing Transmission Line Ratings,* Order No. 881, 87 FR 2244 (Jan. 13, 2022), 177 FERC ¶ 61,179 (2021), *order addressing arguments raised on reh'g,* Order No. 881–A, 87 FR 31712 (May 25, 2022), 179 FERC ¶ 61,125 (2022).

[4] *Id.* P 3.

[5] *Id.* PP 3, 29.

reasonable, and not unduly discriminatory or preferential.

II. Background

4. This ANOPR proposes a DLR framework for reforms that would build upon past Commission actions designed to improve the accuracy of transmission line ratings and ensure transparency in the development and implementation of transmission line ratings. This section describes those past actions, related Commission proceedings, how transmission line ratings are determined, including the incorporation of weather variables into thermal ratings and the use of sensors, and how transmission services are provided and procured in the bulk electric system to provide context for the reforms proposed herein.

A. Transmission Line Rating Proceedings

1. Order No. 881

5. In December 2021, the Commission issued Order No. 881, which reformed both the *pro forma* OATT and the Commission's regulations to improve the accuracy and transparency of transmission line ratings.[6] The Commission explained that seasonal or static transmission line ratings, which represent the maximum transfer capability of each transmission line and are typically based on conservative assumptions about long-term air temperature and other weather conditions, may not accurately reflect the near-term transfer capability of the transmission system and that more accurate transmission line ratings can be achieved through the use of ambient-adjusted ratings (AAR) and DLRs.[7] Therefore, the Commission adopted requirements for the use of AARs,[8] and the use of uniquely determined emergency ratings that include separate AAR calculations, for use in the operations horizon and in post-contingency simulations of constraints.[9] The Commission further required associated transparency requirements and certain discrete requirements related to removing barriers to DLRs, including requiring RTOs/ISOs to establish and implement the systems and procedures necessary to allow transmission providers to electronically update transmission line ratings at least hourly. The Commission also required the consideration of solar heating as part of AARs in the form of separate daytime and nighttime ratings. For this daytime/nighttime ratings requirement, transmission providers must assume solar heating during daylight hours, and nighttime ratings must reflect the absence of solar heating.[10] Although the Commission declined to require hourly forecasts of solar heating, it clarified that nothing in the final rule prohibited a transmission provider from voluntarily implementing hourly forecasts for solar heating.[11]

6. With respect to DLRs, the Commission in Order No. 881 adopted as the definition of DLR: a transmission line rating that applies to a time period of not greater than one hour and reflects up-to-date forecasts of inputs such as (but not limited to) ambient air temperature, wind, solar heating intensity, transmission line tension, or transmission line sag.[12] Although organizationally Order No. 881 discussed the DLR requirement for RTOs/ISOs separately from the AAR requirement,[13] the Commission defined DLRs to include ambient air temperature and solar heating.[14] Consistent with that definition, in this ANOPR, references to DLR include AAR (which, as used in Order No. 881, includes ambient air temperatures and solar daytime/nighttime ratings) as well as the solar requirement and wind requirement proposed below.[15]

7. The Commission agreed with commenters that highlighted the benefits of DLR implementation. The Commission stated that, absent RTOs/ISOs having the capability to incorporate DLRs, voluntary implementation of DLRs by transmission owners in some RTOs/ISOs would be of limited value, as their more dynamic ratings and resulting benefits would not be incorporated into RTO/ISO markets.[16] For example, the Commission acknowledged that the use of DLRs generally allows for greater power flows than would otherwise be allowed, and that their use can detect situations when power flows should be reduced to maintain safe and reliable operation and avoid unnecessary wear on transmission equipment.[17] However, the Commission also recognized that implementing DLRs is more costly and challenging than implementing AARs, and found that the record in the proceeding was insufficient to evaluate the benefits, costs, and challenges of DLR implementation at that time.[18] As a result, the Commission declined to adopt any reforms that would mandate DLR implementation based on the record in that proceeding and instead incorporated that record into a new proceeding in Docket No. AD22–5–000 to further explore DLR implementation.[19]

8. The Commission required implementation of the requirements adopted in Order No. 881 by July 12, 2025, three years after compliance filings were due.[20]

2. Notice of Inquiry

9. On February 17, 2022, the Commission issued a Notice of Inquiry [21] in which the Commission asked a series of questions about whether and how the use of DLRs might be needed to ensure just and reasonable Commission-jurisdictional rates; potential criteria for DLR requirements; the benefits, costs, and challenges of implementing DLRs; the nature of potential DLR requirements; and potential timeframes for implementing DLR requirements. The Commission received initial comments from 40 entities, reply comments from six

[6] 177 FERC ¶ 61,179.

[7] Unlike static thermal line ratings, which are calculated annually or seasonally based on constant values of line current and worst-case weather conditions, AARs are determined using near-term forecasted ambient air temperatures and updated daytime/nighttime solar heating values. As noted above, DLRs are calculated using up-to-date forecasts of ambient air temperature, plus other weather conditions such as wind, cloud cover, solar heating, and precipitation, in addition to transmission line conditions such as tension or sag.

[8] AAR is defined as a transmission line rating that: (a) applies to a time period of not greater than one hour; (b) reflects an up-to-date forecast of ambient air temperature across the time period to which the rating applies; (c) reflects the absence of solar heating during nighttime periods, where the local sunrise/sunset times used to determine daytime and nighttime periods are updated at least monthly, if not more frequently; and (d) is calculated at least each hour, if not more frequently. *Pro forma* OATT, attach. M, Definitions; *see also* 18 CFR 35.28(b)(12).

[9] ''Emergency Rating'' is defined as a transmission line rating that reflects operation for a specified, finite period, rather than reflecting continuous operation. An emergency rating may assume an acceptable loss of equipment life or other physical or safety limitations for the equipment involved. 18 CFR 35.28(b)(13); *pro forma* OATT, attach. M, Definitions.

[10] Order No. 881, 177 FERC ¶ 61,179 at P 149.

[11] *Id.* P 150.

[12] 18 CFR 35.28(b)(14); *see* Order No. 881, 177 FERC ¶ 61,179 at PP 7, 235, 238.

[13] *Compare* Order No. 881, 177 FERC ¶ 61,179 at PP 47–192 (section IV.B ''Ambient-Adjusted Ratings'') *with id.* PP 235–266 (section IV.E ''Dynamic Line Ratings'').

[14] *See supra* n.12.

[15] This ANOPR does not propose any changes to the requirements of Order No. 881.

[16] Order No. 881, 177 FERC ¶ 61,179 at P 255.

[17] *Id.* P 253.

[18] *Id.* P 254.

[19] *Id.* PP 7–9.

[20] We note, however, that certain transmission providers requested and were granted extensions by the Commission. *E.g., N.Y. Indep. Sys. Operator, Inc.,* 186 FERC ¶ 61,237 (2024) (granting an extension until no later than December 31, 2028); *S. Co. Servs. Inc.,* 187 FERC ¶ 61,055 (2024) (granting an extension up to and including December 31, 2026).

[21] *Implementation of Dynamic Line Ratings,* Notice of Inquiry, 178 FERC ¶ 61,110 (2022) (NOI).

entities, and supplemental comments from four entities.[22]

3. Comments Supporting DLRs

10. Comments in response to the NOI suggest potential net benefits of implementing DLRs in certain circumstances. Various commenters state that DLRs would reduce congestion costs.[23] Other commenters highlight DLR benefits related to reduced renewable energy curtailment and reduced interconnection costs.[24]

11. Commenters assert that DLR implementation can help mitigate congestion associated with planned and/or unplanned long-term outages of generation or transmission.[25] Clean Energy Parties identify two examples in which sensors for transmission line sag and transmission line temperature can serve a reliability function, indicating that the cost-benefit analysis for installation of sensors to enable DLR is not limited to economic benefits. Clean Energy Parties assert that DLR sensors serve reliability by detecting potential fire danger during high wind periods and detecting real-time transmission line capacity.[26]

12. Commenters also note that weather sensors (which measure, *e.g.,* wind speed, wind direction and/or cloud cover) and conductor sensors (which measure conductor properties such as temperature, sag or tension) can provide real-time operational awareness. Commenters explain that such operational awareness can be useful for a transmission provider to monitor specific events, such as ice on a transmission line or the response of a transmission line operating near its rating limit. Commenters also state that local sensors provide an additional way to verify weather conditions in real time, which may be especially useful along frequently limiting spans.[27]

13. Some commenters discuss different considerations and challenges with DLRs, which are described in more detail below.

B. Transmission Line Ratings Background

14. Transmission line ratings are determined by the most limiting element among the components that make up the transmission facility, which includes the conductors and the associated equipment necessary for the transfer or movement of electric energy across a transmission facility (*e.g.,* switches, breakers, busses, line traps, metering equipment, and relay equipment).[28] A transmission line rating is the maximum transfer capability of a transmission line taking into account the technical limitations on conductors, relevant transmission equipment, and the transmission system.[29] As the Commission explained, ''Relevant transmission equipment may include, but is not limited to, circuit breakers, line traps, and transformers.'' [30] For purposes of the discussion that follows, references to transmission ''line'' ratings encompass ratings for all transmission equipment that has a rating.

1. Different Types of Transmission Line Ratings: Based on Thermal, Voltage, and Stability Limits

15. Transmission line ratings are based on the most limiting of three types of limits: thermal limits; voltage limits; and stability limits. The thermal limit reflects the maximum amount of power that can safely flow on a transmission line without it overheating. Each transmission line may have several thermal limits depending on the duration of power flow considered, with a lower thermal limit for normal operations and higher thermal limits for long-term and short-term emergency operations. However, voltage and stability limits are typically fixed values that limit the power flow on a transmission line from exceeding the point above which there is an unacceptable risk of a voltage or stability problem.

2. Calculating Thermal Ratings

16. Thermal ratings are determined based on the physical characteristics of the conductor and assumptions about environmental conditions (*e.g.,* ambient air temperature, sun position, cloud cover, wind, or other weather conditions). Thermal ratings determine the maximum amount of power that can flow through a conductor while keeping the conductor under its ''maximum operating temperature,'' a limit designed to prevent wear on the conductor and comply with ground clearance and conductor sag requirements. Engineering standards, including those published by the Institute of Electrical and Electronics Engineers (IEEE) and the International Council on Large Electric Systems (CIGRE), establish methods for calculating transmission line ratings based on the conductor properties and weather conditions.[31] The National Electrical Safety Code (NESC) provides minimum clearance requirements between the transmission conductor and other facilities, including, but not limited to, minimum clearances to other electrical circuits, communications cables, structures below the transmission conductor, vegetation, railroads, roadways, waterways, and ground.[32]

17. Thermal ratings are calculated using formulas, which are based on forecast- or assumption-based inputs that require the use of confidence levels. Confidence levels represent the likelihood that the actual real-time value of that input is less than or equal to the assumption or forecast. For some inputs in thermal ratings formulas, forecast uncertainty may not be normally distributed. In other words, there may be more forecast uncertainty as the input approaches a historic limit or extreme level. For example, if an ambient air temperature forecast approaches an extreme level (*e.g.,* an unusually high temperature for a given location), the uncertainty about that forecast may become skewed such that the actual ambient air temperature value is more likely to be below the forecast temperature than above it.[33] Choosing

[22] A list of commenters in the NOI proceeding and their abbreviated names is located in the appendix.

[23] WATT/CEE Comments, Docket No. AD22–5, at 4 (filed Apr. 25, 2022); DOE Comments, Docket No. AD22–5, app A (Grid-Enhancing Technologies: A Case Study on Ratepayer Impact (Feb. 2022)) at 40–41, 52–53 (filed Apr. 25, 2022); R Street Institute Comments, Docket No. AD22–5, at 8 (filed Apr. 26, 2022); ELCON Comments, Docket No. AD22–5, at 5–6 (filed Apr. 25, 2022); Certain TDUs Comments, Docket No. AD22–5, at 7, 9 (filed Apr. 25, 2022).

[24] WATT/CEE Comments, Docket No. AD22–5, at 4 (filed Apr. 25, 2022) (citing Consentec, *The Benefits of Innovative Grid Technologies* (Dec. 8, 2021) and T. Bruce Tsuchida, Stephanie Ross, and Adam Bigelow, *Unlocking the Queue with Grid-Enhancing Technologies* (Feb. 1, 2021)); DOE Comments, Docket No. AD22–5, attach. A at 44 (filed Apr. 25, 2022); ELCON Comments, Docket No. AD22–5, at 7 (filed Apr. 25, 2022).

[25] PJM Comments, Docket No. AD22–5, at 5 (filed May 9, 2022); Clean Energy Parties Comments, Docket No. AD22–5, at 21 (filed Apr. 25, 2022); LineVision Comments, Docket No. AD22–5, at 5 (filed Apr. 22, 2022).

[26] Clean Energy Parties Comments, Docket No. AD22–5, at 15 (filed Apr. 25, 2022).

[27] *See* LineVision Comments, Docket No. AD22–5, at 8–10 (filed Apr. 25, 2022); TAPS Comments, Docket No. AD22–5, at 7 (filed Apr. 25, 2022); TS Conductor Comments, Docket No. AD22–5, at 9–10 (filed Mar. 13, 2022); WATT/CEE Comments, Docket No. AD22–5, at 14 (filed Apr. 25, 2022); Electricity Canada Comments, Docket No. AD22–5, at 6 (filed Apr. 25, 2022). A transmission span is the distance between specific transmission support towers.

[28] Order No. 881, 177 FERC ¶ 61,179 at P 44.

[29] *Id.*

[30] *Id.*

[31] *See, e.g.,* IEEE Standard 738–2023, ''IEEE Standard for Calculating the Current-Temperature Relationship of Bare Overhead Conductors,'' 2023 (IEEE 738); and CIGRÉ Technical Brochure 207, ''Thermal Behavior of Overhead Conductors, Working Group 22.12,'' 2002 (CIGRÉ 207).

[32] *See, e.g.,* IEEE Standard C2–2023, ''2023 National Electric Safety Code,'' 2023, at section 23.

[33] Lisa Sosna, et al., *Demonstration of Potential Data/Calculation Workflows Under FERC Order 881's Ambient-Adjusted Rating (AAR)*

Continued

confidence levels requires a balance between realizing the benefits of incorporating weather forecasts and ensuring that the estimate does not overestimate the thermal capability of the transmission line, which could create system management challenges for transmission providers and/or jeopardize reliability.

3. Variables That Impact Thermal Ratings of Transmission Lines

18. Thermal ratings are affected by a variety of factors, including ambient air temperatures, solar heating, and wind speed.

a. Ambient Air Temperature

19. Transmission line thermal ratings generally decrease with warmer ambient air temperatures and generally increase with cooler ambient air temperatures, because the heat generated within the conductor due to resistive losses dissipates to the environment more quickly at lower ambient temperatures.

b. Solar Heating

20. Transmission line thermal ratings generally decrease when exposed to more intense solar heating conditions and generally increase when exposed to less intense solar heating conditions, because lower solar heating allows the conductor to carry more power without overheating. Solar heating is most intense when there are clear-sky conditions, and the sun is at its peak position in the sky.

c. Wind Speed and Direction

21. Wind cools a transmission line, which dissipates the heat generated from resistive losses more quickly and results in greater transmission transfer capability on that line. Transmission line thermal ratings generally increase when wind speed is higher and when wind direction is perpendicular to a line and generally decrease when wind speed is lower and when wind direction is parallel to a line. According to research presented by Idaho National Laboratory at the Commission's 2019 DLR Workshop, consideration of wind speed and direction could theoretically increase transmission line ratings by more than 100% in certain periods.[34] In practice, the typical increase in transmission line ratings may be smaller than 100%, but it would still be significant, because consideration of forecast uncertainty and confidence levels for both wind speed forecasts and wind direction forecasts would reduce the potential rating increases. A higher confidence level would proportionally discount the impact of reflecting wind speed and direction on a transmission line rating.[35]

C. Incorporating Weather Variables Into Thermal Ratings

22. Because a variety of weather variables affect thermal ratings, DLRs can incorporate weather variables that ''reflect transfer capability even more accurately'' than static line ratings.[36] In addition to ambient air temperature, DLRs can incorporate weather variables and other inputs into the calculation of thermal ratings ''such as (but not limited to) wind, cloud cover, solar heating (beyond daytime/nighttime distinctions), precipitation, and transmission line conditions such as tension or sag.'' [37] Moreover, the use of sensors installed on or near the transmission line can provide localized and potentially more accurate weather forecasts when compared to large-area weather forecasts, such as those provided by the National Weather Service, further improving DLR accuracy.

23. DLR implementation requires making reliable short-term forecasts [38] at very specific locations. In DLR implementation, weather measurements and, potentially, other data from sensors are combined with data from the recent past to create short-term weather forecasts for the specific location of the transmission line. These short-term weather forecasts are the basis of the DLRs themselves.[39]

24. DLRs are implemented through the following steps: identifying candidate transmission lines; installing any needed sensors and data communication systems; forecasting short-term weather conditions; revising thermal ratings formulas; and validating thermal ratings and integrating them in an energy management system (EMS).[40]

1. Sensors and Their Use in DLRs

25. Generally, two types of sensors can be used to implement DLRs: (1) weather sensors that measure factors like wind speed, wind direction, and/or cloud cover; and (2) conductor sensors that measure the condition of the transmission line itself, such as conductor temperature, sag, or tension.

26. Sensors can be positioned either on the ground or on the transmission line. Each option has advantages and disadvantages.[41] For instance, sensors placed on a transmission line may require transmission line outages for installation and maintenance, while ground-based sensors can be easier to install and maintain. However, ground-based sensors are more vulnerable to physical tampering and could pose a security threat for safe operations.[42] Some DLR systems incorporate photo-spatial sensors (*e.g.,* light detection and ranging (LiDAR)) and/or line sensors installed on or close to the monitored transmission line.[43] The ideal placement of a sensor can depend upon the sensor technology and which variable the sensor is trying to measure. For example, optical fiber sensors that are placed inside a conductor can measure conductor properties but may not be capable of measuring ambient weather conditions.

27. The real-time data acquired from either type of sensor can provide many benefits to the DLR systems and the transmission providers using them. For example, data from sensors can provide real-time operational awareness to grid operators, helping to identify

Requirements, joint FERC/NOAA staff presentation at FERC's Software Conference at slide 24–25 (June 23, 2022), *https://www.ferc.gov/media/demonstration-potential-datacalculation-workflows-under-ferc-order-no-881s-ambient-adjusted.*

[34] Jake Gentle, et al., *Forecasting for Dynamic Line Ratings,* Idaho National Laboratory presentation at FERC DLR Workshop slide 13 (Sept. 10, 2019), *https://www.ferc.gov/sites/default/files/2020-09/Gentle-INL.pdf.*

[35] *See* Order No. 881, 177 FERC ¶ 61,179 at P 128 (acknowledging concerns about temperature forecast margins being too low or too high).

[36] *See id.* P 26.

[37] *See id.* P 7.

[38] Although clear-sky solar heating calculations are generally referred to as forecasts, they may be better thought of as ''determinations'' because they carry no forecast uncertainty. Total solar power along a transmission line can be calculated based on the location and orientation of a transmission line, at any time and day of the year. *See* Conseil International des Grands Réseaux Électriques/International Council of Large Electric Systems (CIGRE), Guide for Thermal Rating Calculations of Overhead Lines, Technical Brochure 601, Dec. 2014 (CIGRE TB 601). Thus, our use of ''forecast'' here when referring to clear-sky solar heating is not intended to indicate any expected forecast uncertainty about the determination of clear-sky solar heating.

[39] *See, e.g.,* Jake Gentle, et al., *Dynamic Line Ratings Forecast Time Frames,* Idaho National Lab (2023), Dynamic-Line-Rating-Forecasting-Time-Frames.pdf (inl.gov); *Managing Transmission Line Ratings,* Docket No. AD19–15–000, Technical Conference, Day 1 (Sept. 10, 2019), Tr. 29:1–3 (Joey Alexander, Ampacimon SA) (filed Oct. 8, 2019) (discussing a DLR project undertaken by Elia, Belgium's transmission system operator and noting that, ''they wanted to make sure they could implement a two-day ahead forecast of the DLR because that's what that market traded on''); *see also Managing Transmission Line Ratings,* Staff Report, Docket No. AD19–15–000, at 10 (issued Aug. 23, 2019) (''As mentioned earlier, forecasting of the relevant weather conditions and line ratings over some operationally useful period . . . is necessary for DLR implementation.'').

[40] *See* Order No. 881, 177 FERC ¶ 61,179 at P 7.

[41] *Managing Transmission Line Ratings,* Staff Report, Docket No. AD19–15–000, at 9 (issued Aug. 23, 2019).

[42] *Id.*

[43] *Id.* at 7–8.

unexpected changes in a transmission line's capacity. Data from sensors can also be used to verify the thermal rating calculated for the transmission line, a process known as ''ratings validation.'' Data from sensors can also help measure the accuracy of the local weather forecasts underlying DLRs and provide information with which to improve the forecasting methodology, a process known as ''forecast training.'' Both ratings validation and forecast training can improve thermal ratings over time. Moreover, forecast training can help transmission providers discover systemic patterns in local forecast errors and thus adjust their forecasting methods to improve local forecast accuracy. As a simplified example, a transmission provider may observe that actual wind speeds, as measured by a sensor, in a particular valley are consistently lower than the weather forecasts indicate for the broader area. In this case, the transmission provider could develop a ''trained'' forecast reflecting a lower localized wind speed forecast for that valley, which could be used to calculate the transmission line's thermal ratings more accurately.[44]

28. However, some weather elements can be incorporated into a transmission line rating without a sensor. For instance, in addition to ambient air temperature, initial outreach indicates that solar heating based on the sun's position and some forecasts of cloud cover can be incorporated into transmission line ratings without sensors.

29. The effective use of sensors to determine DLRs requires at least four key considerations: what type of sensors and where to place them; how many sensors are needed; how to configure them; and how to ensure physical security and cybersecurity. Sensor placement requires a careful assessment of the sensor type, the number of sensors needed, and the location for each of the sensors to be installed.

30. The appropriate quantity and configuration of sensors depends on the type of sensors used and the weather variables they measure. Weather-based DLR systems may incorporate real-time measurements and/or forecasts of wind conditions because wind conditions have the greatest effect on the thermal rating of a transmission line.[45] However, because wind speed and direction are highly variable and subject to local geographic differences,[46] real time measurements of wind conditions may require numerous sensors. As such, reflecting wind conditions in transmission line ratings can be costly because it requires installation and maintenance of sufficient local sensors and communications equipment.

31. Generally, placing more sensors at rating-limiting elements or spans ensures more granular data to calculate transmission line ratings.[47] Generally, placing fewer sensors can diminish the granularity and accuracy and may require transmission providers to interpolate the weather and transmission line data from sensors on other parts of the transmission line, which could be difficult or impractical, and factors such as varied terrain or turns in the transmission line could make this calculation potentially inaccurate. Varied terrain turns in the transmission line, and the length of the transmission line, each create the need for more sensors, but each sensor represents an additional cost. Thus, sensor placement can be more expensive for both transmission providers with longer transmission lines and those with transmission lines in hilly or mountainous areas.

32. DLR implementation also involves physical security and cybersecurity risks. Therefore, as with other transmission systems, protections must be put in place to ensure the physical security and cybersecurity of the communications equipment, computer hardware, and computer software required to integrate and manage DLR systems, which can include sensors and/or alternative data sources, and associated data in the transmission provider's EMS. DLR systems may rely upon numerous routable devices, each of which may be vulnerable to cyberattack. Physical security and cybersecurity protections must be installed to protect and ensure that the new sensor system is not tampered with or compromised. Moreover, transmission providers implementing DLRs may not be able to use the off-the-shelf computer systems, cloud solutions, and/or services offered by vendors.[48] Instead, transmission providers may have to build their own secure, on-premises computer systems, rely on services that comply with applicable North American Electric Reliability Corporation (NERC) Reliability Standards, and quickly adopt developing best practices to ensure that the DLR system is secure.

2. Incorporating Local Weather Forecasts Into DLRs

33. While DLRs that rely on weather forecasts may offer significant value, forecasting local weather may present several challenges, with related opportunities for solutions. First, because all transmission line ratings—including DLRs—depend upon the transmission line's most-limiting element, the location of the most-limiting element must be determined to identify which local weather forecast is needed. Further, changes in the local weather may change which of the weather-sensitive elements is most limiting.[49] However, while identifying limiting segments across a transmission line may appear conceptually challenging, a joint FERC/National Oceanic and Atmospheric Administration (NOAA) staff presentation concluded that determining the location of the most-limiting segment for purposes of AAR calculations can be relatively simple once the transmission line rating formula and weather data processing is established.[50]

34. Second, incorporating additional weather variables into transmission line ratings will require preparing forecasts for each variable, which may be more resource intensive. For example, due to increased variability and micro-geographic differences, forecasting wind speed and direction may require more

[44] Rating validation and forecast training do not necessarily have to use *weather* sensors; *conductor* sensors can also be used for these purposes. While conductor sensors do not measure weather variables directly, conductor sensor measurements nonetheless reflect the effects of real-time weather, and thus can be used to indirectly validate and train weather forecasts.

[45] WATT/CEE Comments, Docket No. AD22–5, at 14 (filed Apr. 25, 2022).

[46] Clean Energy Parties Comments, Docket No. AD22–5, at 12 (filed Apr. 25, 2022).

[47] For example, BPA explains that it paid $50,000 for each of its DLR sensors, and an additional $17,500 each for installation, in its DLR study with EPRI. BPA Comments, Docket No. AD22–5, at 9 (filed Apr. 25, 2022).

[48] *See, e.g.,* PPL Comments, Docket No. AD22–5, at 17–18 (filed Apr. 25, 2022).

[49] For example, if the wind were to stop blowing across one segment of a transmission line and were to start blowing across another segment, the former segment might become the most limiting element. Therefore, thermal ratings for each segment on a transmission line must be frequently redetermined based on up-to-date weather forecasts, and thus the most limiting element or transmission line span may vary.

[50] *See, e.g.,* Lisa Sosna, *et al., Demonstration of Potential Data/Calculation Workflows Under FERC Order 881's Ambient-Adjusted Rating (AAR) Requirements,* joint FERC/NOAA staff presentation at FERC's Software Conference slides 10, 14 and 26 (June 23, 2022), *https://www.ferc.gov/media/demonstration-potential-datacalculation-workflows-under-ferc-order-no-881s-ambient-adjusted* (FERC/NOAA staff evaluated ratings at numerous elements on each line they demonstrated AAR calculations for, adopting the rating at the most conservative element as the rating of the overall line; ''Our approach proved to support very quick calculation of line ratings despite the large number of rating [elements].''). In theory, establishing such a process could be more complicated for DLR systems that consider additional weather variables.

analysis from meteorologists than ambient air temperature forecasts.

35. Third, relying on weather forecasts for calculating transmission line ratings exposes transmission providers to forecasting uncertainty. In most instances, reductions in forecasted transmission line ratings can be identified hours or days ahead of the operating hour, giving transmission providers and market participants time to act to ensure flows do not exceed transmission line ratings. However, in some instances, when changes in forecasts happen at or close to the operating hour and cause potential reliability concerns, transmission system operators may need to issue curtailment or redispatch instructions to manage the shortage in transmission capability, which could be operationally similar to transmission line derates that do not involve DLRs. This challenge can be managed through specification of appropriate forecast confidence levels and related forecast margins.[51] Where weather conditions are particularly challenging to forecast, achieving the necessary confidence levels may require significant forecast margins that may make DLRs impractical, even on heavily congested transmission lines. We discuss this challenge further below in section IV.A.6. Confidence Levels.

3. Current Use and Benefits of DLRs

36. As discussed further in the Need for Reform section below, numerous DLRs have already been deployed domestically and internationally, with resulting benefits to the transmission system and customers, including increased transmission capacity, reduced congestion, and reduced costs.

D. Pro forma Transmission Scheduling and Congestion Management Practices

37. As relevant here, transmission line ratings are used by transmission providers [52] in determining: (1) whether a transmission service request is approved or denied; and (2) when and how transmission service must be curtailed or redispatched to protect reliability or interrupted to provide service to a higher-priority customer.[53]

1. How Transmission Service Is Procured

38. Because the preliminary proposals discussed herein—both for identifying the congested transmission lines that would be subject to a DLR requirement and the transmission services that would be impacted by such a DLR requirement—relate to the details of transmission service and congestion management practices under the *pro forma* OATT, we provide an overview of those services and practices.

a. Transmission Service Under the pro forma OATT

39. There are two types of transmission service provided under the *pro forma* OATT: (1) point-to-point transmission service; and (2) network integration transmission service.

40. Point-to-point transmission service is the reservation and transmission of capacity and energy from the point(s) of receipt to the point(s) of delivery.[54] Point-to-point transmission service is offered on a firm and non-firm basis.[55] When evaluating a point-to-point transmission service request, the transmission provider determines whether there is sufficient available transfer capability (ATC) from a specified point-of-receipt to a specified point-of-delivery. ATC can be calculated for any path on the transmission system to determine if the system has available capacity to reliably accommodate new transmission customers, using as inputs total transfer capability (TTC) and existing transmission commitments (ETC) on that path, as well as the amount of transfer capability reserved as part of the capacity benefit margin (CBM) and transmission reliability margin (TRM).[56] Specifically, ATC is calculated as: ATC = TTC − ETC − CBM − TRM.[57]

41. The transmission line rating of a given transmission line is the primary input into determining its TTC and, thus, is a key determinant of the transmission line's ATC. ATC on a path is not a single, static value; rather, it has different values based on the requested point-to-point transmission service duration (hourly, daily, weekly, monthly, annual), time (when service is requested to start and end), and priority (firm or non-firm). For example, firm annual ATC starting January 1 of a given year might be zero because of high levels of ETC during the summer months, while firm monthly, weekly, and daily ATC on the same path may be higher during non-summer months.

42. In the event a transmission provider is unable to accommodate a request for long-term (*i.e.,* with a term of one year or more) firm point-to-point transmission service, the *pro forma* OATT establishes various obligations on the transmission provider, including obligations related to redispatch and conditional firm transmission service. First, such a transmission provider must (under certain conditions) use due diligence to provide redispatch from its own resources and not unreasonably deny self-provided redispatch or redispatch arranged by a transmission customer from a third party.[58] Second, such a transmission provider must offer to provide firm transmission service with the condition that it may curtail the service prior to the curtailment of other firm transmission service for a specified number of hours per year or during specified system condition(s) (*i.e.,* conditional firm transmission service).[59]

43. Network integration transmission service or network service allows a network customer to use the transmission system in a manner comparable to how the transmission provider uses its own transmission system to serve its native load. Specifically, network service allows a network customer's network resources (generators, firm energy purchases, etc.) to be integrated and economically dispatched to serve its network load.

[51] A forecast margin is a margin by which a forecast of an expected parameter is adjusted (up or down, depending on the circumstance) to provide sufficient confidence that the actual parameter value will not be less favorable than the forecast. *See, e.g.,* Order No. 881, 177 FERC ¶ 61,179 at P 128.

[52] In this ANOPR, we use transmission provider to mean any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce. 18 CFR 37.3. Therefore, unless otherwise noted, ''transmission provider'' refers only to public utility transmission providers. The term ''public utility'' as defined in the FPA means ''any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter.'' 16 U.S.C. 824(e).

[53] Transmission line ratings are also used by transmission providers for other purposes, including as part of transmission planning.

[54] *Pro forma* OATT, section 1.37 (Point-To-Point Transmission Service).

[55] *Id.; id.* section 13.6 (Curtailment of Firm Transmission Service).

[56] Section 37.6 of the Commission's regulations defines CBM as ''the amount of TTC preserved by the transmission provider for load-serving entities, whose loads are located on that Transmission Provider's system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved Reliability Standards.'' 18 CFR 37.6(b)(1)(vii). Section 37.6 defines TRM as ''the amount of TTC necessary to provide reasonable assurance that the interconnected transmission network will be secure, or such definition as contained in Commission-approved Reliability Standards.'' *Id.* § 37.6(b)(1)(viii).

[57] *Preventing Undue Discrimination & Preference in Transmission Serv.,* Order No. 890, 72 FR 12266 (Mar. 15, 2007), 118 FERC ¶ 61,119, at P 209, *order on reh'g,* Order No. 890–A, 72 FR 12266 (Mar. 15, 2007), 121 FERC ¶ 61,297 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

[58] *Pro forma* OATT, section 15.4(b).

[59] *Id.* section 15.4(c); *id.* section 19.3 (System Impact Study Procedures).

44. Network service is provided from a fleet of network resources to a set of network loads rather than from a single point-of-receipt to a single point-of-delivery.[60] As such, when evaluating network integration transmission service requests, a transmission provider performs load-flow modeling of various anticipated dispatches on its system and compares the modeled flows on each impacted transmission line to the transmission line's rating.[61]

b. Congestion Management Under the pro forma OATT

45. Congestion is managed under the *pro forma* OATT according to service priority. While there are some exceptions, the typical order of service priority is: (1) network integration transmission service and long-term (one year or longer) firm point-to-point; (2) short-term (less than one year) firm point-to-point; (3) conditional firm transmission service and secondary service; and (4) non-firm point-to-point.[62] Under the *pro forma* OATT, network integration transmission service is subject to curtailment or redispatch, while point-to-point transmission service is subject to curtailment or interruption.[63] Under the *pro forma* OATT, curtailment and redispatch are typically done for reliability reasons, whereas interruption is typically conducted for economic reasons. Prior to curtailing network integration transmission service and/or long-term firm point-to-point service, transmission providers may, however, be required to redispatch network customers' resources and the transmission provider's own resources, on a least-cost and non-discriminatory basis and without respect to ownership of such resources, to relieve a transmission constraint or maintain reliability.[64]

c. Transmission Scheduling and Congestion Management in the RTOs/ISOs

46. All RTO/ISO tariffs reflect Commission-approved variations from the *pro forma* OATT provisions. In RTOs/ISOs, transmission service is typically provided as part of the security-constrained economic dispatch (SCED) and security-constrained unit commitment (SCUC) processes performed by the market software. As part of SCED and SCUC, the market software performs a constrained optimization based on supply offers and demand that minimizes production costs and ensures (among other things) that flows on transmission lines do not exceed transmission line ratings. Therefore, transmission line ratings are a primary factor in the optimization process and efficient pricing.[65]

2. Existing Data Reporting on Congestion, or Proxies of Congestion

47. The availability of data measuring the cost of congestion on the transmission system, or proxies that could be used to estimate the cost of congestion, varies between RTO/ISO and non-RTO/ISO regions.

a. RTOs/ISOs

48. In RTO/ISO markets, at least two types of congestion metrics are computed and publicly reported. First, as part of solving their real-time and day-ahead markets, RTOs/ISOs compute and publish locational marginal prices (LMP) that include a ''congestion component,'' indicating how much congestion has increased (or decreased) a locational price at a node compared to reference node(s).[66] The congestion component of an LMP for a node reflects the extent to which an additional increment of load at that node would, because of binding transmission constraints, need to be supplied by resources with different marginal costs than the resources available to serve additional increments of load at the reference node(s).[67] For example, if an RTO/ISO must ramp up a higher-cost peaking unit in lieu of a lower-cost baseload unit due to a transmission constraint, the additional incremental cost of the peaking unit would be reflected in the congestion component of LMP. Second, as part of solving their real-time and day-ahead markets, RTOs/ISOs compute and publish the marginal cost of each transmission flow constraint, sometimes called the ''shadow prices'' of those constraints. These shadow prices reflect the marginal production cost savings that would occur if the flow limit on a constraint were relaxed by one MW. Shadow prices are used to calculate the marginal congestion component of LMP.[68] LMPs and shadow prices reflect *marginal* rather than *total* costs.

b. Non-RTO/ISO Regions

49. Non-RTO/ISO regions do not publish nodal prices in the same manner as RTOs/ISOs, which can result in less public information available on congestion costs outside of RTOs/ISOs. However, practices to manage congestion and redispatch of internal resources may be used to assess congestion costs in non-RTO/ISO regions.

i. ATC and Constrained Posted-Paths

50. Section 37.6 of the Commission's regulations requires transmission providers to calculate and post certain information, including ATC and TTC.[69] Such calculations and postings must be made for the following posted paths: (1) any control-area-to-control area interconnection; (2) any path for which service has been denied, curtailed, or interrupted for more than 24 hours in the past 12 months; and (3) any path for which a transmission customer has requested that ATC or TTC be posted.[70] For all posted paths, ATC, TTC, CBM, and TRM values must be automatically posted.[71] These postings allow potential transmission customers to: (1) make requests for transmission services offered by transmission providers, request the designation of a network resource, and request the termination of

[60] *Pro forma* OATT, pt. III (Network Integration Transmission Service Preamble); *id.* section 28 (Nature of Network Integration Transmission Service).

[61] *Pro forma* OATT, section 32 Additional Study Procedures For Network Integration Transmission Service Requests, attach. C (Methodology To Assess Available Transfer Capability), and attach. D (Methodology for Completing A System Impact Study).

[62] *Id.* section 13.6 (Curtailment of Firm Transmission Service); *id.* section 14.7 (Curtailment or Interruption of Service); *id.* section 33 (Load Shedding and Curtailments).

[63] The *pro forma* OATT defines curtailment as a reduction in firm or non-firm transmission service in response to a transfer capability shortage as a result of system reliability conditions. *Id.* section 1.8 (Curtailment). The *pro forma* OATT defines interruption as a reduction in non-firm transmission service due to economic reasons pursuant to section 14.7. *Id.* section 1.16 (Interruption).

[64] *Id.* section 33.2 (Transmission Constraints).

[65] While SCED and SCUC processes consider power flow over the interties, RTOs/ISOs do not typically optimize ATC in the same manner as internal locations.

[66] *See, e.g.,* ISO–NE, *FAQs: Locational Marginal Pricing,* (Feb. 2024), *https://www.iso-ne.com/participate/support/faq/lmp*; NYISO, *LBMP In-Depth Course: Congestion Price Component* 4–15 (Nov. 2022), *https://www.nyiso.com/course-materials*; MISO, *MTEP18: Book 4 Regional Energy Information,* at 8 (2018).

[67] *See* NYISO, *LBMP In-Depth Course: Congestion Price Component* 19–21 (Nov. 2022), *https://www.nyiso.com/course-materials*; FERC, *Energy Primer: A Handbook for Energy Market Basics* 69–71 (2024), *https://www.ferc.gov/sites/default/files/2024-01/24_Energy-Markets-Primer_0117_DIGITAL_0.pdf.*

[68] The MISO tariff and the CAISO Business Practice Manual for Definitions and Acronyms both define ''shadow price'' as ''the marginal value of relieving a particular constraint.'' *See* MISO, MISO Tariff, Module A—Common Tariff Provisions, Definitions—S (Shadow Price), *https://www.misoenergy.org/legal/rules-manuals-and-agreements/tariff/*; CAISO, *Business Practice Manual for Definitions & Acronyms* 128, (Jan. 21, 2023), *https://bpmcm.caiso.com/BPM%20Document%20Library/Definitions%20and%20Acronyms/2023-Jan31_BPM_for_Defintions_and_Acronyms_V20_Redline.pdf.*

[69] 18 CFR 37.6.

[70] *Id.* § 37.6(b)(1)(i).

[71] *Id.* § 37.6(b)(3).

the designation of a network resource; (2) view and download information regarding the transmission system necessary to enable prudent business decision making; (3) post, view, upload and download information regarding available products and desired services; (4) identify the degree to which transmission service requests or schedules were denied or interrupted; (5) obtain access to information to support ATC calculations and historical transmission service requests and schedules for various audit purposes; and (6) make file transfers and automate computer-to-computer file transfers and queries.[72]

51. Section 37.6(b)(1)(ii) of the Commission's regulations defines constrained posted paths as any posted paths that have ATC less than or equal to 25 percent of TTC at any time during the preceding 168 hours or for which ATC has been calculated to be less than or equal to 25 percent of TTC for any period during the current hour or the next 168 hours.[73] For all constrained posted paths, additional detailed information must be made available upon request.[74] This includes ''all data used to calculate ATC [and] TTC,'' including relevant transmission line ratings, identification of limiting element(s), the cause of the limit (*e.g.,* thermal, voltage, stability), and load forecast assumptions.[75]

52. Under these requirements, depending on whether the paths are constrained or unconstrained, transmission providers are required to post firm and non-firm ATC and related data for many different timeframes (*e.g.,* daily, monthly, seasonally, annually) for different durations into the future ranging from daily ATC for the next day to annual ATC as far out as 10 years (in certain circumstances for some constrained posted paths).[76] Other posting requirements (including posting of hourly ATC) apply to non-firm ATC. All such postings are typically made to the transmission providers' Open Access Same-Time Information System (OASIS) site.

ii. Redispatch Costs

53. Under the *pro forma* OATT, transmission providers may redispatch resources due to the existence of transmission constraints in certain circumstances.[77] Because non-RTO/ISO regions do not publish nodal prices that reflect congestion costs, the cost of redispatching resources is less transparent.[78] Nonetheless, redispatching of resources in non-RTO/ISO regions to manage congestion may be comparable to the practices in RTOs/ISOs in that both are tasked with reliably serving wholesale transmission customers at least cost.

III. The Potential Need for Reform

54. As a result of the continued development of DLR technology, the record gathered in the NOI, and outreach conducted since the issuance of the NOI, we believe that it is appropriate to examine whether transmission line ratings that fail to reflect forecasts of solar heating and wind speed and direction result in sufficiently accurate transmission line ratings and whether reforms may be necessary to improve the accuracy of transmission line ratings and ensure transparency of their development and implementation. Without these reforms, we believe that transmission line ratings may be insufficiently accurate and may unjustly and unreasonably increase the cost to reliably serve wholesale electric customers by forgoing many potential benefits. As the Commission has previously found, inaccurate transmission line ratings result in Commission-jurisdictional rates that are unjust and unreasonable.[79] Accordingly, we preliminarily find that transmission line ratings that do not account for solar heating and wind conditions may result in rates and practices that are unjust, unreasonable, unduly discriminatory or preferential. We begin with a discussion about existing uses of DLRs and their associated benefits before discussing potential reforms.

A. Demonstrated DLR Benefits

55. DLRs have been deployed nationally and internationally, with resulting benefits to the transmission system and customers, including increased transmission capacity, reduced congestion, and reduced costs. Existing DLR projects and data demonstrating their benefits strengthen the potential need for reform.

1. U.S. Examples

56. In the United States, some transmission providers and system operators report using DLR systems to curb congestion, increase transmission capacity, and reduce costs. Below, we detail four specific examples of DLR use. These examples illustrate how DLRs can more accurately reflect the capability of a transmission facility and result in cost savings where congestion is decreased due to increased transmission capability.

57. First, PPL, which owns transmission facilities in PJM, has spent approximately $1 million implementing DLRs, using 18 sensors on more than 31 miles of three 230 kV transmission line segments, and has integrated DLRs for these transmission lines into PJM's real-time and day-ahead markets.[80] By contrast, PPL states that it internally estimated the cost to reconductor the Susquehanna-Harwood double-circuit line to be approximately $12 million.[81] PPL reports that, based on 2022 data, implementing DLR on these three transmission lines produced normal ratings gains above AARs of approximately 17% and emergency ratings gains above AARs ranging from 8.5% to 16.5%.[82] PPL further reports that deploying DLR on two Susquehanna-Harwood lines eliminated congestion, which was $12 million per year in the summer of 2022, and that, deploying DLR on the Juniata-Cumberland transmission line decreased congestion costs from approximately $66 million in the winter of 2021–22 to approximately $1.6 million in the winter of 2022–23. PPL explains that it aims to implement DLR

[72] *Id.* § 37.6(a).

[73] *Id.* § 37.6(b)(1)(ii).

[74] *Id.* § 37.6(b)(2)(ii).

[75] *Id.*

[76] *Id.* § 37.6(b)(3).

[77] Section 33.2 of the *pro forma* OATT provides that during any period when the Transmission Provider determines that a transmission constraint exists on the Transmission System, and such constraint may impair the reliability of the Transmission Provider's system, the Transmission Provider will take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Transmission Provider's system. Section 33.2 of the *pro forma* OATT provides that to the extent the Transmission Provider determines that the reliability of the Transmission System can be maintained by redispatching resources, the Transmission Provider will initiate procedures pursuant to the Network Operating Agreement to redispatch all Network Resources and the Transmission Provider's own resources on a least-cost basis without regard to the ownership of such resource. Section 33.2 of the *pro forma* OATT further provides that any redispatch under this section may not unduly discriminate between the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers and any Network Customer's use of the Transmission System to serve its designated Network Load.

[78] Any redispatch costs are allocated proportionately to the load ratio share of the transmission provider and network customers. *See pro forma* OATT, section 33.3 (Cost Responsibility for Relieving Transmission Constraints).

[79] Order No. 881, 177 FERC ¶ 61,179 at P 3.

[80] Idaho National Laboratory, *A Guide to Case Studies of Grid Enhancing Technologies* 11 (Oct. 2021), *https://inl.gov/content/uploads/2023/03/A-Guide-to-Case-Studies-for-Grid-Enhancing-Technologies.pdf*; T&D World, *PPL Electric Utilities Wins 95th Annual Edison Award* (June 2023), *https://www.tdworld.com/electric-utility-operations/article/21267742/ppl-electric-utilities-wins-95th-annual-edison-award.*

[81] PPL Comments, Docket No. AD22–5, at 14–15 (filed Apr. 25, 2022).

[82] PPL Supplemental Comments, Docket No. AD22–5, at 2–4 (filed Feb. 9, 2024).

on five additional transmission lines by the end of 2024.[83]

58. PJM notes that, during Winter Storm Elliott, DLRs on the previously mentioned PPL transmission lines proved higher than the AARs, and that, had PJM not had the higher DLRs, PJM would have had to redispatch the system to maintain reliability. PJM adds that such action would have been very difficult under the critical operating conditions caused by the winter storm.[84]

59. In a DLR deployment study of a single 115 kV transmission line owned by National Grid in Massachusetts, DLRs were found to increase transmission capacity by approximately 16% above AARs (excluding periods when DLRs were lower than AARs). However, the project also recorded that DLRs were below AARs 22% of the time in the summer and 27% of the time in the winter (at times when wind speed was low and the AAR would have been overstated).[85] The DLR sensors were reported as ''easy to install, reliable, and effective at reporting periods of either excess or limited capacity.'' [86]

60. A Department of Energy (DOE) report described implementation of DLRs using tension sensors along five 345 kV transmission lines and three 138 kV transmission lines by Oncor Electric Delivery Company's (Oncor), a transmission owner in ERCOT. The report noted that DLRs increased the available capacity of the lines by between 6% and 14% beyond the transmission lines' AARs, on average. As described in the report, Oncor determined that the cost of installing DLRs ranged from $16,000 to $56,000 per mile, depending on the type of transmission towers upon which DLR equipment was installed.[87] The report noted that installation costs in this instance totaled approximately $4.8 million and that DLR system costs are often only a fraction of the cost of reconductoring or rebuilding a transmission line.[88]

61. In August 2021, Duquesne Light Company (Duquesne), a transmission owner in PJM, partnered with LineVision on a DLR pilot project.[89] The pilot project installed DLRs on 345 kV lines in southwestern Pennsylvania and increased the lines' available capacity by 25%, on average. In 2022, Duquesne expanded the pilot program and installed sensors to also monitor 138 kV transmission lines, reporting an average transmission line rating increase of 25%, which, it asserts, has helped to make way for more renewable energy sources.[90]

62. In addition, a recent report on an initial deployment of DLRs by subsidiaries of AES Corporation in Indiana and Ohio shows that estimated costs to implement DLRs on the studied transmission lines are generally lower than reconductoring alternatives and that DLRs can be implemented more quickly than reconductoring.[91]

2. International Examples

63. Many transmission providers elsewhere in the world have similar, or greater, levels of experience with DLRs as those in the United States, with some running pilot projects and others using DLRs in operations. Like the U.S. examples cited above, these projects illustrate the potential for DLRs to more accurately estimate transmission transfer capability and reduce costs due to decreased congestion.

64. Elia (Belgium's system operator) uses DLRs on 33 transmission lines that range from 70 kV to 380 kV.[92] A representative from Elia stated the following at a September 10, 2021 Commission workshop: ''the lines equipped with [DLRs] are more reliable than other lines'' and that Elia knows ''more about those lines than any other lines in the grid.'' [93] RTE, France's transmission operator, used DLR to integrate wind power generation and avoid a $30 million transmission line replacement.[94]

65. Austria has installed DLR on 15% of its transmission system, leading to almost $17 million in congestion cost savings in 2016.[95] The Slovenian system operator has used DLR on each span of 31 transmission lines since 2016, increasing capacity an average of 22%.[96] A joint project between the University of Palermo and Terna Rete Italia SPA to install 90 DLR monitors in Italy saved roughly $1.25 million per transmission line per year, with a payback period of two years or less.[97]

66. In 2020, LineVision and the European Commission's FARCROSS consortium, a project to boost cross-border transmission in the European Union, announced a partnership to install DLR in Hungary, Greece, Slovenia, and Austria.[98]

67. The United Kingdom's National Grid has installed DLR on a 275 kV circuit in Cumbria, with estimated savings of £1.4 million per year.[99] In Scotland, SP Energy Networks installed DLR at a cost of approximately $240,000 to increase capacity on two circuits and avoid the need for a transmission line rebuild that would have cost $2.25 million, roughly 10 times the cost of DLR installation.[100]

68. Analysis of four AltaLink transmission lines in Canada found

[83] *Id.*

[84] PJM Supplemental Comments, Docket No. AD22–5, at 2 (filed Jan. 17, 2024).

[85] K. Engel, J. Marmillo, M. Amini, H. Elyas, B. Enayati, *An Empirical Analysis of the Operational Efficiencies and Risks Associated with Static, Ambient Adjusted, and Dynamic Line Rating Methodologies* 3, 8 (Jul. 2, 2021), *https://cigre-usnc.org/wp-content/uploads/2021/11/An-Empirical-Analysis-of-the-Operational-Efficiencies-and-Risks-Associated-with-Line-Rating-Methodologies.pdf.*

[86] Idaho National Laboratory, *A Guide to Case Studies of Grid Enhancing Technologies* 8 (Oct. 2022), *https://inl.gov/content/uploads/2023/03/A-Guide-to-Case-Studies-for-Grid-Enhancing-Technologies.pdf.*

[87] Warren Wang and Sarah Pinter, U.S. Dept. of Energy, *Dynamic Line Rating Systems for Transmission Lines* at 33, U.S. Dept. of Energy (Apr. 2014), *https://www.energy.gov/sites/prod/files/2016/10/f34/SGDP_Transmission_DLR_Topical_Report_04-25-14.pdf.*

[88] *Id.*

[89] Duquesne, *Duquesne Light Company Investing in New Technology to Enhance Grid Capacity and Reliance,* NewsRoom (Aug. 2021), *https://newsroom.duquesnelight.com/duquesne-light-company-investing-in-new-technology-to-enhance-grid-capacity-and-reliance.*

[90] LineVision, Inc, *Duquesne Light Company Further Enhances Transmission Capacity, Reliability with Grid-Enhancing Technology* (Aug. 2022), *https://www.linevisioninc.com/news/duquesne-light-company-further-enhances-transmission-capacity-reliability-with-grid-enhancing-technology.*

[91] AES Corporation and LineVision, Inc., *Lessons from First Deployment of Dynamic Line Ratings* (Apr. 2024), *https://www.aes.com/sites/aes.com/files/2024-04/AES-LineVision-Case-Study-2024.pdf.* We understand the report to refer to The Dayton Power and Light Company as AES Ohio and Indianapolis Power & Light Company as AES Indiana, each a subsidiary of AES Corporation.

[92] Idaho National Laboratory, *A Guide to Case Studies of Grid Enhancing Technologies* 33 (Dec. 2022), *https://inldigitallibrary.inl.gov/sites/sti/sti/Sort_64025.pdf.*

[93] *Workshop to Discuss Certain Performance-based Ratemaking Approaches,* Docket No. RM20–10, Technical Video Conference (Sept. 10, 2021), Tr. 240:9–13 (Victor le Maire, Elia System Operator) (filed Oct. 13, 2021).

[94] Idaho National Laboratory, *A Guide to Case Studies of Grid Enhancing Technologies,* at 13 (Dec. 2022).

[95] Idaho National Laboratory, *A Guide to Case Studies of Grid Enhancing Technologies,* at 22 (Oct. 2022).

[96] Špela Vidrih, Andrej Matko, Janko Kosmač, Tomaž Tomšič, Aleš Donko, *Operational Experiences with the Dynamic Thermal Rating System,* at 8, 2d South East European Regional CIGRE Conference, Kyiv (2018).

[97] Idaho National Laboratory, *A Guide to Case Studies of Grid Enhancing Technologies,* at 18 (Oct. 2022).

[98] T&D World, *LineVision Announces EU-Funded Projects with European Utilities* (Apr. 14, 2020), *https://www.tdworld.com/overhead-transmission/article/21128758/linevision-announces-eu-funded-projects-with-european-utilities.*

[99] LineVision, *National Grid installs LineVision's Dynamic Line Rating sensors to expand the capacity of existing power lines,* (Oct. 2022), *https://www.linevisioninc.com/news/national-grid-installs-linevisions-dynamic-line-rating-sensors-to-expand-the-capacity-of-existing-power-lines.*

[100] Idaho National Laboratory, *A Guide to Case Studies of Grid Enhancing Technologies,* at 28 (October. 2022).

DLRs were higher than static transmission line ratings ''up to 95.1% of the time, with a mean increase of 72% over a static rating.'' [101] Moreover, DLRs were higher than seasonal ratings 76.6% of the time, with an average capacity improvement of 22% over static ratings.[102]

B. Consideration of Reforms

69. We are considering reforms that would require implementation of certain DLR practices, including: requiring transmission line ratings to reflect solar heating based on the sun's position and forecastable cloud cover; requiring transmission line ratings to reflect forecasts of wind conditions—wind speed and wind direction—on certain transmission lines; and enhancing data reporting practices to identify candidate transmission lines for the wind requirement in non-RTO/ISO regions. Such reforms may ensure that transmission line ratings result in jurisdictional rates that are just and reasonable.

70. In Order No. 881, the Commission found that transmission line ratings, and the rules by which they are established, are practices that directly affect the rates for the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce (hereinafter referred to collectively as ''wholesale rates''). [103] The Commission further found that, because of the relationship between transmission line ratings and wholesale rates, inaccurate transmission line ratings result in wholesale rates that are unjust and unreasonable.[104] Acting pursuant to FPA section 206, the Commission concluded that certain revisions to the *pro forma* OATT and the Commission's regulations were necessary to ensure just and reasonable wholesale rates.[105]

71. In Order No. 881, the Commission recognized that, in addition to ambient air temperatures and daytime/nighttime solar heating, other weather conditions such as wind, cloud cover, solar heating intensity, precipitation, and transmission line conditions such as tension and sag, can affect the amount of transfer capability of a given transmission facility. The Commission explained that incorporating these additional inputs provides transmission line ratings that are closer to the true thermal transmission line limits than AARs.[106]

72. We preliminarily find that transmission line ratings that do not reflect solar heating based on the sun's position and up-to-date forecasts of forecastable cloud cover may result in unjust and unreasonable wholesale rates. We further preliminarily find that transmission line ratings that do not reflect up-to-date forecasts of wind conditions on certain transmission lines may also result in unjust and unreasonable wholesale rates. We seek comment on both of these preliminary findings.

73. We also preliminarily find that transmission line ratings that better reflect solar heating and, where appropriate, wind conditions would result in more accurate system transfer capability, thereby resulting in just and reasonable rates. As the Commission noted in Order No. 881, increasing transfer capability will, on average, reduce congestion costs because transmission providers will be able to import less expensive power into what were previously constrained areas, resulting in cost savings, as discussed above, and wholesale rates that avoid unnecessary congestion costs.[107] For example, as discussed above, PPL's implementation of DLRs on just two of its transmission lines reduced annual congestion costs by approximately $77 million annually.[108]

74. The use of DLRs may also provide benefits to customers by mitigating the need for more expensive upgrades. PPL's internal estimate to reconductor the Susquehanna-Harwood double-circuit line discussed above was approximately $12 million. In contrast, the cost to install DLRs on that line was less than $500,000.[109] In addition, a recent report on an initial deployment of DLRs by subsidiaries of AES Corporation compares estimated costs and implementation times of DLR deployment and reconductoring.[110] For a 345 kV transmission line in the AES Indiana footprint located in an area where significant load growth was expected, the cost to reconductor the transmission line was estimated to be $590,000 per mile, while the cost for DLR implementation was estimated to be $45,000 per mile.[111] The implementation time for reconductoring was estimated to be two years while the implementation for DLR was estimated to be nine months. For a 69 kV transmission line in the AES Ohio footprint that was experiencing regular thermal overload, the cost for full reconductoring was estimated to be $1.63 million, while the cost for DLR with targeted reconductoring was estimated to be $390,000.[112] The implementation timelines were two years for full reconductoring and one year for DLR with targeted reconductoring.

75. Likewise, the ability to increase transmission flows into load pockets may reduce a transmission provider's reliance on local reserves inside load pockets. This may reduce local reserve requirements and the costs to maintain that required level of reserves, which, in turn, may result in cost reductions and wholesale rates that avoid unnecessary congestion costs.[113]

76. DLRs can also provide reliability benefits by increasing the transfer capability on the existing transmission system in a way that provides system operators with more options during stressed system conditions. For example, as PJM explained, the presence of DLRs on its system during Winter Storm Elliott contributed to system reliability because the higher transmission line ratings allowed it to avoid re-dispatching its system.[114] DLR systems also give transmission providers a more complete picture of how the system is operating, particularly in contingency situations, which allows transmission providers to maximize their system's performance while maintaining a safe, reliable, and efficient system.[115] DLRs can also improve reliability by monitoring the condition of transmission lines and alerting utilities to hazardous conditions or potential failures on transmission lines, which may otherwise go

[101] Bishnu P. Bhattarai, Jake P. Gentle, Timothy McJunkin, Porter J. Hill, Kurt S. Myers, Alexander W. Abboud, Rodger Renwick, & David Hengst, *Improvement of Transmission Line Ampacity Utilization by Weather-Based Dynamic Line Rating,* IEEE Transactions on Power Delivery 1853, 1861 (2018), *https://doi.org/10.1109/TPWRD.2018.2798411.*

[102] *Id.* at 1853, 1861.

[103] Order No. 881, 177 FERC ¶ 61,179 at P 29.

[104] *Id.*

[105] *Id.*

[106] *Id.* P 36.

[107] *Id.* P 34 (''Such congestion cost changes and related overall price changes will more accurately reflect the actual congestion on the system, leading to wholesale rates that more accurately reflect the cost the wholesale service bring provided.''); *see also supra* section III.A.1.

[108] *See supra* P 57.

[109] *See* PPL Comments, Docket No. AD22–5, at 14–15 (filed Apr. 25, 2022).

[110] AES Corporation and LineVision, Inc., *Lessons from First Deployment of Dynamic Line Ratings* (Apr. 2024), *https://www.aes.com/sites/aes.com/files/2024-04/AES-LineVision-Case-Study-2024.pdf.* We understand the report to refer to The Dayton Power and Light Company as AES Ohio and Indianapolis Power & Light Company as AES Indiana, each a subsidiary of AES Corporation.

[111] *Id.* at 14.

[112] *Id.* at 18.

[113] Order No. 881, 177 FERC ¶ 61,179 at P 34.

[114] *See supra* P 58.

[115] *See* DOE Comments, Docket No. AD22–5, Attachment A at 58 (filed Apr. 25, 2022); AES Corporation and LineVision, Inc., *Lessons from First Deployment of Dynamic Line Ratings,* at 5–6 (Apr. 2024).

undetected.[116] In addition, DLRs with certain sensors, such as LiDAR, can support public safety by providing for greater situational awareness by monitoring the clearance of transmission lines from the ground or nearby vegetation and providing data to assist in wildfire prevention strategies, including when to clear vegetation and when to upgrade equipment.[117]

77. The Commission also explained that decreasing transfer capability when it is overstated can avoid placing transmission lines at risk of inadvertent overload and can signal to the market that more generation and/or transmission investment may be needed in the long term.[118]

78. Finally, we preliminarily find that certain transparency reforms are necessary to ensure accurate transmission line ratings. As discussed below, the record indicates a lack of transparency for congestion costs in non-RTO/ISO regions. Understanding if, and how much, congestion may exist on a transmission line is essential to understanding whether that transmission line may benefit from the preliminary proposals in this rulemaking. As the Commission explained in Order No. 881, if a stakeholder does not know the basis for a given transmission line rating, particularly for a transmission line that frequently binds and elevates prices, it cannot determine whether the transmission line rating is accurately calculated.[119] We seek comment on this preliminary finding.

IV. Potential Reforms and Request for Comment

A. Potential Transmission Line Ratings Reforms and Request for Comment

79. As detailed above in section II.C.3. Current Use of DLRs and below in sections IV.A.2. Potential Solar Requirement and IV.A.3. Potential Wind Requirement, the current record suggests that DLRs can result in more accurate transmission line ratings[120] and significant benefits, including cost savings, through increased transfer capability. Specifically, we preliminarily find that the benefits of more accurate transmission line ratings outweigh the cost of implementation for DLRs that reflect more detailed solar heating based on the sun's position and forecastable cloud cover and, for certain transmission lines, that reflect forecasts of wind conditions. The applicability of the solar and wind requirements proposed below—applying a solar requirement for all transmission lines and a wind requirement for only certain lines—follows our understanding from outreach that reflecting solar heating based on the sun's position and forecastable cloud cover can be done without installing sensors and that reflecting wind conditions likely requires sensors. We seek comment on the proposed framework, as discussed below.

80. As noted above, in Order No. 881, the Commission, in effect, required RTOs/ISOs to be able to accept DLRs.[121] We do not propose to change this requirement here.

1. Framework for a Potential Requirement

81. We preliminarily propose a DLR framework for reforms to improve the accuracy of transmission line ratings.[122] These reforms would require transmission providers to implement DLRs that—on all transmission lines—reflect solar heating, based on the sun's position and forecastable cloud cover, and—on certain transmission lines—reflect forecasts of wind speed and wind direction. Thus, the proposed DLR framework sets forth both a solar requirement and a wind requirement. Additionally, the reforms would ensure transparency into the development and implementation of transmission line ratings and would enhance data reporting practices related to congestion in non-RTO/ISO regions to identify candidate transmission lines for the wind requirement. Under the proposed framework, these requirements would be subject to certain exceptions and/or implementation limits, as detailed below.

82. The NOI asked whether other weather conditions should be part of a potential DLR requirement.[123] However, there appears to be neither a strong record of the impact of other non-wind/non-solar weather conditions on transmission line ratings nor a standard for incorporating those weather conditions into transmission line ratings, as there is for solar heating and wind conditions (*e.g.,* IEEE 738 and CIGRE TB 299).[124] Thus, we do not propose to include such other variables in the proposed framework. We seek comment on the impact of non-wind/non-solar weather conditions on transmission line ratings, relevant standards associated with those weather conditions, and whether and how the Commission should require consideration of other weather conditions in its proposed rule.

2. Potential Solar Requirement

83. We preliminarily propose to require that all transmission line ratings used for evaluating transmission service that ends not more than 10 days after the transmission service request date (hereinafter ''near-term transmission service'')[125] be subject to a solar requirement to reflect solar heating in two ways, one based on solar heating derived from the sun's position and one based on up-to-date forecasts of forecastable cloud cover, subject to certain exceptions.

84. This proposal would apply to all transmission line ratings because it is our understanding that the solar requirement can be incorporated without installing sensors, enabling the benefit of additional transfer capability through more accurate accounting of solar heating with only minimal implementation costs. Further, this proposal would apply the solar requirement to near-term transmission service because the requirement effectively would subsume the daytime/nighttime solar heating requirement set forth in Order No. 881, which applies to near-term transmission service. The currently effective Attachment M of the *pro forma* OATT already provides for transmission providers to take a self-exception to the requirement to include solar heating in transmission line ratings for transmission lines for which the technical transfer capability of the limiting conductors and/or limiting transmission equipment is not dependent on solar heating, and for transmission lines whose transfer capability is limited by a transmission

[116] *See* PPL Comments, Docket No. AD22–5, at 15 (filed Apr. 25, 2022).

[117] *See* AES Corporation and LineVision, Inc., *Lessons from First Deployment of Dynamic Line Ratings,* at 17 (Apr. 2024); DOE Comments, Docket No. AD22–5, attach. A at 57–58 (filed Apr. 25, 2022).

[118] Order No. 881, 177 FERC ¶ 61,179 at P 35.

[119] *Id.* P 39.

[120] The proposed reforms in this ANOPR apply only to thermal ratings. Therefore, unless otherwise noted, use of the term ''rating'' hereafter should be assumed to mean ''thermal rating.''

[121] *Id.* P 255.

[122] We note that, per Attachment M of the *pro forma* OATT, a transmission line rating would apply to both the conductor and any relevant transmission equipment, which includes but is not limited to circuit breakers, line traps, and transformers. *See pro forma* OATT, attach. M, Transmission Line Rating.

[123] NOI, 178 FERC ¶ 61,110 at P 17 (Question 17).

[124] Institute of Electrical and Electronics Engineers, IEEE Standard for Calculating the Current-Temperature Relationship of Bare Overhead Conductors 21–23, IEEE Std 738–2023 (2023) (IEEE 738); Conseil International des Grands Réseaux Électriques/International Council of Large Electric Systems (CIGRE), Guide for selection of weather parameters for bare overhead conductor ratings, Technical Brochure 299, Aug. 2006 (CIGRE TB 299).

[125] *See pro forma* OATT, attach. M, Near-Term Transmission Service.

system limit that is not dependent on solar heating.[126] The existing exception would also apply to the proposed requirement that transmission line ratings reflect solar heating based on the sun's position and forecastable cloud cover.

a. Reflecting Solar Heating Based on the Sun's Position

85. We preliminarily propose to require that all transmission line ratings used for near-term transmission service reflect solar heating based on the sun's position accounting for the relevant geographic location, date, and hour. Under this approach, transmission line ratings would reflect the potential for the sun to heat the transmission lines during each hour based on its position in the sky, assuming zero cloud cover. Stated another way, transmission providers will need to calculate, for each hour, the effect of the sun's position on its transmission line ratings. Transmission providers would have the discretion to calculate the effect of the sun's position on their transmission line ratings using more granular time increments. Because solar heating based on the sun's position starts at close to zero in the hours shortly after sunrise, rises throughout the morning hours to the midday peak, and then decreases through the afternoon to near zero again in the hours shortly before sunset, requiring all transmission line ratings used for near-term transmission service to reflect solar heating based on the sun's position may produce more accurate transmission line ratings than the daytime/nighttime assumptions required under Order No. 881.

86. As the Commission explained in Order No. 881,[127] clear-sky solar heating assumptions based on the sun's position can be computed with accuracy from formulas, such as those provided in standards like IEEE 738 or CIGRE TB 601.[128] Such calculations depend only on geographic location, date, and time and are therefore free of any forecast uncertainty. Likewise, such calculations do not require local sensors or weather data. The Commission considered whether AARs should incorporate such hourly clear-sky solar heating assumptions in Order No. 881 but elected at that time to instead require the simpler but less precise daytime/nighttime approach to solar heating. Under that approach, the AARs are required to reflect only the absence of solar heating during nighttime periods, where local sunrise/sunset times are updated at least monthly. The Commission found that, compared to the hourly clear-sky solar heating approach, the simpler daytime/nighttime approach ''balance[d] the benefits and burdens'' associated with the rule.[129]

87. However, upon considering the NOI comments, and based on subsequent outreach and further research, we preliminarily find that the benefits of more accurate transmission line ratings that reflect solar heating based on the sun's position are significant. This is particularly true during the hours right after sunrise and right before sunset—hours with relatively little solar heating. Because electric demand often peaks in the hours just before sunset, assuming midday solar heating during these hours may understate the amount of transfer capability available and increase the costs and challenges of reliably meeting peak demand. Additionally, regions with high levels of solar generation may benefit from the additional transmission capacity as load rises and solar generation declines, which further demonstrates that understating the amount of transfer capability available during these hours may increase the costs and challenges of maintaining reliability.

88. The record in the Order No. 881 proceeding indicates that considering solar heating based on the sun's position can affect a transmission line's rating by as much as 5% to 11%.[130] Also, joint research by Commission staff and NOAA staff modeled the effect of the absence of solar heating on the rating of a typical aluminum conductor steel reinforced (ACSR) cable and found that transmission line ratings could increase by about 12% in the hours immediately after sunrise and before sunset.[131] While this range of percentages represents expected transmission line rating increases between assuming full midday sun and assuming no sun whatsoever, they nonetheless demonstrate that transmission line ratings would likely significantly increase in the early morning and late afternoon hours, and moderately increase in most other daytime hours, relative to assuming full midday sun conditions during all daylight hours. For example, Commission and NOAA staff's modeling found that considering hourly clear-sky solar heating increased transmission line ratings (relative to the daytime/nighttime ratings approach) in each of the four hours immediately after sunrise and before sunset by 4% to 12%.[132]

89. We seek comment on our preliminary proposal to require that all transmission line ratings used for near-term transmission service reflect solar heating based on the sun's position for the relevant geographic location, date, and hour under a clear sky. We also seek comment on the costs, non-financial burdens, and financial and non-financial benefits of this requirement.

90. As noted in section III. The Potential Need for Reform above, we preliminarily find that transmission line ratings used for near-term transmission service that do not reflect solar heating based on the sun's position may result in unjust and unreasonable wholesale rates. In addition to the requests for comments on specific aspects of this preliminary proposal, we seek comment on whether reflecting solar heating based on the sun's position in transmission line ratings used for near-term transmission service would result in more accurate transmission line ratings and would, in turn, better reflect system transfer capability. We also seek comment on whether the greater accuracy of transmission line ratings would result in cost savings and just and reasonable wholesale rates. Further, given that the sun's position is forecastable without uncertainty, we seek comment on whether transmission providers should reflect solar heating based on the sun's position for transmission service longer than 10 days forward.

[126] *See id.,* attach. M, Obligations of the Transmission Provider; *see also* Order No. 881, 177 FERC ¶ 61,179 at P 227.

[127] Order No. 881, 177 FERC ¶ 61,179 at P 150.

[128] Institute of Electrical and Electronics Engineers, IEEE Standard for Calculating the Current-Temperature Relationship of Bare Overhead Conductors 21–23, IEEE Std 738–2023 (2023) (IEEE 738); Conseil International des Grands Réseaux Électriques/International Council of Large Electric Systems (CIGRE), Guide for Thermal Rating Calculations of Overhead Lines, Technical Brochure 601, Dec. 2014.

[129] Order No. 881, 177 FERC ¶ 61,179 at P 150.

[130] Potomac Economic Comments, Docket No. RM20–16, at 15 (filed Mar. 23, 2021) (''We estimate that the average size of [setting solar irradiance to zero] for nighttime ratings to be an 11 percent increase''); PG&E Comments, Docket No. RM20–16, at 11 (filed Mar. 22, 2021) (''PJM's research shows that at least 14% of their line ratings are increased by 10% by considering solar irradiance''); Entergy Comments, Docket No. RM20–16, at 8 (filed Mar. 22, 2021) (''The shade of the night provides an additional 5% to the ratings of the lines'').

[131] Lisa Sosna, et al., *Demonstration of Potential Data/Calculation Workflows Under FERC Order 881's Ambient-Adjusted Rating (AAR) Requirements,* joint FERC/NOAA staff presentation at FERC's 2022 Software Conference at slide 29 (June 23, 2022), *https://www.ferc.gov/media/demonstration-potential-datacalculation-workflows-under-ferc-order-no-881s-ambient-adjusted.* Actual increases could vary from the modeled increase, depending on conductor surface conditions and other factors.

[132] *Id.*

b. Reflecting Solar Heating Based on Forecastable Cloud Cover

91. We preliminarily propose to require that all transmission line ratings used for near-term transmission service reflect solar heating based on up-to-date forecasts of forecastable cloud cover. Transmission providers will need to reflect, for each hour, the effect of forecastable cloud cover on its transmission line ratings. Transmission providers would have the discretion to calculate the effect of the sun's position on their transmission line ratings using more granular time increments. This proposal does not imply that the cloud cover must be forecastable for the entire 10 days, but rather that transmission providers should reflect forecastable cloud cover in their up-to-date forecasts as that information becomes available.[133] Based on outreach and research, we understand that certain overcast periods can be forecast accurately in certain conditions. For example, some portions of the continental United States regularly see overcast conditions for weeks at a time. During such periods, solar heating can be significantly reduced, significantly increasing transmission transfer capability.

92. We preliminarily propose to define forecastable cloud cover as cloud cover that is reasonably determined, in accordance with good utility practice, to be forecastable to a sufficient level of confidence to be reflected in transmission line ratings. We clarify that we are not proposing to require that transmission providers seek to forecast individual clouds, or even most cloud formations. We seek comment on this definition of forecastable cloud cover and the level of confidence that is necessary to incorporate and benefit from a cloud cover forecast.

93. We also seek comment on whether sensors are needed to accurately forecast cloud cover. If commenters believe local sensors are required to accurately forecast cloud cover events, we seek comment on how such sensors improve such forecasts.

94. We note that some cloud cover events may be more easily forecast forward than other cloud cover events. Some overcast conditions will not be forecastable at all. For many or most weather systems that produce forecastable cloud cover conditions, such conditions may be forecastable only for a short time ahead of a given operating hour, rather than for the full 10 days forward. For other very large weather systems, or for periods of seasonal overcast conditions in some parts of the country, such conditions may be forecastable for longer periods.

95. Therefore, we propose to limit the proposed requirement to reflect up-to-date forecasts of *forecastable* cloud cover because, if a cloud cover event is not ''forecastable,'' then we believe it would not be practical to require that it be reflected. However, if a cloud cover event becomes ''forecastable'' during the relevant timeframe, it must be reflected in the up-to-date forecasts under the proposed requirement. Specifically, under the proposed requirement, forecastable cloud cover data must be incorporated into ratings calculations as close to real time as reasonably possible (*i.e.,* as close to the time that a relevant forecast becomes available) given the timelines needed to obtain forecast data and perform the calculation, as well as any other steps needed for validation, communication, or implementation of the transmission line rating.[134] We seek comment on this proposal to require that transmission providers incorporate up-to-date forecasts of forecastable cloud cover into all transmission line ratings used for near-term transmission service. We also seek comment on whether the requirement to incorporate up-to-date forecasts of forecastable cloud cover should apply to transmission services other than near-term transmission service and whether all transmission service should be subject to this requirement, not just near-term transmission service.

96. We seek comment on the costs, non-financial burdens, and financial and non-financial benefits of reflecting solar heating through the use of up-to-date forecasts of forecastable cloud cover in transmission line ratings used for near-term transmission service, and the extent to which this practice would increase the accuracy of the resulting transmission line rating. Further, we seek comment on whether transmission providers should reflect up-to-date forecasts of forecastable cloud cover in transmission line ratings used for transmission service up to 10 days forward or whether these forecasts should be reflected only in the transmission line ratings used for a shorter time frame, such as 36 or 48 hours forward. If parties believe sensors are required to accurately forecast cloud cover, we seek comment on whether cloud cover should alternatively be reflected only in transmission line ratings for transmission lines that exceed a congestion threshold, and what that threshold should be. We seek comment on whether, alternatively, up-to-date forecasts of forecastable cloud cover should be reflected only in the ratings of the more limited set of transmission lines we propose would be subject to a wind requirement (described below).

3. Potential Wind Requirement

97. We preliminarily propose to additionally require certain transmission lines to reflect up-to-date forecasts of wind conditions, including wind speed and direction, in their transmission line ratings for use in 48-hour transmission service, as defined below in section IV.A.3.a.i.a 48-Hour Transmission Service. We preliminarily propose that this wind requirement would be implemented only on transmission lines[135] exceeding thresholds for wind speed[136] and congestion.[137] Other transmission lines would not be subject to the wind requirement but would still be subject to the solar requirement discussed above.

98. We preliminarily propose that, for each transmission line that is subject to the wind requirement, individual transmission providers apply good utility practice to determine which specific electric system equipment associated with that line—beyond the conductor—is affected by wind conditions and thus also would be subject to the wind requirement. This approach is similar to that taken by the Commission in Order No. 881 with respect to AARs.[138] We seek comment on whether the wind requirement should explicitly apply only to the conductor portion of a transmission line, and if so why.

a. Components of a Wind Requirement

99. We preliminarily propose to require transmission providers to reflect up-to-date forecasts of wind speed and wind direction in transmission line ratings on lines subject to the wind requirement. We propose to apply this wind requirement to only transmission lines exceeding thresholds for wind speed and congestion. A potential final rule imposing such a wind requirement would modify *pro forma* OATT

[133] *See infra* P 95.

[134] *See* Order No. 881, 177 FERC ¶ 61,179 at P 143.

[135] *Id.* P 44.

[136] This threshold is described below in section IV.A.3.b.ii Wind Speed Threshold.

[137] This threshold is described below in section IV.A.3.b.iii Congestion Threshold.

[138] This proposal is consistent with the definition of Transmission Line Rating in Attachment M of the *pro forma* OATT, which includes ''considering the technical limitations on conductors and relevant transmission equipment . . . [which] may include, but is not limited to, circuit breakers, line traps, and transformers.'' *See pro forma* OATT, attach. M, Definitions; *see also* Order No. 881, 177 FERC ¶ 61,179 at PP 44–45.

Attachment M and specify details of the wind requirement, including the time horizon, wind forecasting requirements, sensor requirements, exceptions, and transparency of relevant data. Below we provide additional detail and seek comment on these elements of a wind requirement.

100. As noted in section III. The Potential Need for Reform above, we preliminarily find that certain transmission line ratings that do not reflect up-to-date forecasts of wind speed and direction may result in unjust and unreasonable wholesale rates.

i. Time Horizon and Forecasting Requirement

101. For transmission lines subject to a wind requirement, we preliminarily propose to require transmission providers to use transmission line ratings that account for wind speed and direction as the basis for evaluating requests for transmission services that will end within 48 hours of the transmission service request (48-hour transmission service). For those transmission lines, this approach would require transmission providers to use transmission line ratings that reflect up-to-date forecasts of wind speed and direction to evaluate requests for hourly and daily point-to-point transmission services under the *pro forma* OATT that fall within the 48-hour time horizon. All longer-term (weekly, monthly, yearly) point-to-point services would not be affected by this requirement. For those transmission lines, transmission providers would also use transmission line ratings that incorporate the proposed wind requirement in determining whether to curtail, interrupt, or redispatch transmission service on transmission lines subject to a wind requirement, if such curtailment or redispatch is necessary because of issues related to flow limits on transmission lines and anticipated to occur within the next 48 hours of such determination.

102. In the NOI, the Commission asked about the timeframes (and corresponding types of transmission service) for which DLRs should be used. In response, some commenters argue that DLRs should be used for a variety of transmission services, including hourly, daily, and weekly services.[139] Other commenters argue that DLRs should be used only in real-time operations for decisions regarding curtailment, interruption, and redispatch.[140]

103. Accordingly, we seek comment on the appropriateness of the proposed 48-hour time horizon. We note that current DLR implementations reflect the use of DLRs across timeframes sufficient to include DLRs in the real-time and day-ahead markets of RTOs/ISOs. For example, PPL uses DLRs in the PJM real-time and day-ahead energy markets.[141] We also understand that DLR vendors offer services that calculate DLRs as far as 10 days into the future.[142] However, given that the forecast uncertainty for wind speed and direction that would underlie a wind requirement likely increases the longer the time period, we preliminarily believe that the time horizon for a wind requirement should be shorter than the 10-day horizon for the existing AAR requirement.

104. The appropriate time horizon for which transmission service evaluations should incorporate a wind requirement depends on whether the accuracy benefit of incorporating wind forecasts exceeds the burden of calculating and managing the ratings for such forward hours. At longer time horizons, forecast uncertainty increases, perhaps resulting in the need for larger forecast margins to ensure the necessary level of confidence in the forecasts.[143] On the other hand, limiting the wind requirement to a short time horizon would forego the benefits of more accurate transmission line ratings because those benefits would only accrue for a smaller number of hours and a more limited set of transmission services.

105. Because the bulk of the effort of calculating and archiving of transmission line ratings on transmission lines subject to the wind requirement is in the setup of the automated systems, we anticipate that the data burdens of this option would not vary significantly depending on the time horizons.[144] Nevertheless, we seek comment on whether applying a wind requirement to transmission line ratings over longer time horizons would result in a greater data burden as compared to a wind requirements for shorter-time horizons.

106. Considering all of these factors, we preliminarily find that a 48-hour time horizon provides a reasonable balance between the benefits and burdens associated with a wind requirement and may therefore be appropriate for a potential wind requirement. Such a timeframe seems to strike the right balance of creating significant benefits by covering important transmission service transactions, such as those in the RTO/ISO day-ahead markets, while reflecting that implementing a wind requirement for longer timeframes may not supply sufficient value to justify the burden. We seek comment on whether the 48-hour time horizon is the appropriate timeframe or whether the Commission should consider requiring a longer time horizon (*e.g.,* a week, 10 days, monthly). We seek comment on the accuracy of the forecasting of wind speed and wind direction in these time horizons (including the 48-hour time horizon), and any potential benefits and burdens that may result from a longer time horizon. We also seek comment on the ability of DLR vendors to calculate DLRs in these time horizons, and at what level of confidence.

ii. Sensor Requirements

107. We preliminarily propose that transmission providers, for their transmission lines subject to the wind requirement, install sensors that measure wind speed and direction as

[139] Clean Energy Parties Comments, Docket No. AD22–5, at 15 (filed Apr. 25, 2022) (hourly or sub-hourly); LADWP Comments, Docket No. AD22–5, at 7 (filed Apr. 25, 2022) (daily or hourly); WATT/CEE Comments, Docket No. AD22–5, at 16 (filed Apr. 25, 2022) (near-term transmission service as defined in Order 881).

[140] APS Comments, Docket No. AD22–5, at 12 (filed Apr. 25, 2022); NYTOs Comments, Docket No. AD22–5, at 16 (filed Apr. 25, 2022); EEI Comments, Docket No. AD22–5, at 5 (filed Apr. 25, 2022); Eversource Comments, Docket No. AD22–5, at 4–5 (filed Apr. 25, 2022); NYISO Comments, Docket No. AD22–5, at 6 (filed Apr. 25, 2022); Entergy Comments, Docket No. AD22–5, at 5 (filed Apr. 25, 2022); MISO Comments, Docket No. AD22–5, at 32 (filed Apr. 25, 2022).

[141] *See* PPL Comments, Docket No. AD22–5, at 14 (filed Apr. 25, 2022).

[142] *See, e.g.,* LineVision, *Technology: Software,* (stating that LineVision's LineRate DLR product provides ''[f]orecasted DLR, hourly, up to 240 hours (10 days) out''), *www.linevisioninc.com/technology#software.*

[143] In Order No. 881, the Commission required transmission providers to use AARs as the basis for evaluating ''near-term'' transmission service requests, defined as transmission service that ends not more than 10 days after the transmission service request date, because the Commission determined that forecasts of ambient air temperature were sufficiently accurate up to 10 days into the future, and that transmission line ratings based on such 10-day-ahead forecasts would provide sufficient benefits. Order No. 881, 177 FERC ¶ 61,179 at PP 120–121. For transmission service that is beyond 10 days forward, however, the Commission found that seasonal line ratings are the appropriate transmission line ratings because ambient air temperature forecasts for such future periods have more uncertainty than near-term forecasts, and thus tend to converge to the longer-term ambient air temperature forecasts used in seasonal line ratings. *Id.* P 200; *cf. id.* P 105 (discussing the justification for the 10-day threshold for the use of AARs).

[144] For example, Clean Energy Parties and WATT/CEE state that system integration is a one-time engineering effort before it becomes plug-and-play, and that resources for subsequent installation on additional transmission lines will be limited to the time needed to determine the location of, and to install, DLR sensors. Clean Energy Parties Comments, Docket No. AD22–5, at 20 (filed Apr. 25, 2022); WATT/CEE Comments, Docket No. AD22–5, at 19–20 (filed Apr. 25, 2022).

determined to be necessary for forecast training or to otherwise ensure adequate information about local weather conditions.

108. We seek comment on whether the Commission should require a transmission provider to determine what sensors, if any, need to be installed for forecast validation and forecast training in order to ensure that forecasts of wind speed and direction are sufficiently accurate. We propose that, in doing so, transmission providers should consider a non-exhaustive list of factors including: average ambient wind speed at the relevant altitude(s), distribution of wind direction at the relevant altitude(s), length and configuration of conductors, local topography, local vegetation, and position of weather stations. We seek comment on what other factors transmission providers should be required to consider when determining what sensors, if any, need to be installed.

109. Further, if commenters believe that detailed sensor configuration requirements are not necessary for transmission lines subject to a wind requirement, we seek comment on why that approach is preferable and how such requirements should be constructed.

110. We also seek comment on whether the Commission should mandate sensors at all. We understand that some vendors are offering approaches to DLRs that do not use sensors.[145] For example, a wind requirement could simply require that transmission line ratings reflect up-to-date forecasts of wind speed and wind direction. Under such an approach, the wind requirement would be defined in terms of the wind conditions that must be reflected in the transmission line ratings, rather than what technical equipment transmission providers must use to produce wind forecasts. This approach is similar to the requirements adopted in Order No. 881 for AARs to reflect up-to-date forecasts of ambient air temperature. We seek comment on whether the technology and capability to determine accurate forecasts of wind speed and wind direction currently exists, or will exist in the near future, such that transmission providers can use a sensor-less DLR to accurately and safely determine their transmission line ratings. We seek comment on whether there are benefits to a sensor-less approach, beyond cost savings, as compared to a sensor-based approach. We also seek comment on the costs of sensor-less approaches, including any comparison to the costs of measuring wind speed and direction using sensors. We seek comment on whether there any certain scenarios (*i.e.,* line configurations, types of lines) where a sensor-based approach may be preferable to sensor-less approach.

111. We also seek comment on whether, if a wind requirement generally requires the use of sensors, the Commission should give transmission providers the discretion to determine that *no sensors* are required in certain instances. Specifically, we seek comment on what types of factors transmission providers should consider when identifying such instances and whether such factors should be reflected in any ultimate Commission directive. We also seek comment on whether an explicit provision would be necessary to give transmission providers such latitude, or if requiring the use of sensors ''as determined to be necessary'' would be sufficient to provide such latitude. Additionally, to the extent that the Commission does not require the use of sensors, we seek comment on how this would affect other proposals in this rule (*i.e.,* the congestion threshold, timing considerations, etc.).

112. We seek comment on the applicability of NERC Facility Ratings Reliability Standard FAC–008–5 and NERC Transmission Relay Loadability Reliability Standard PRC–023–4 to the wind requirement and whether any changes would need to be made to these or other NERC Reliability Standards to accommodate a potential wind requirement.

113. Further, we seek comment on the type and costs of needed communications equipment, computer hardware, and computer software required to integrate sensors and associated data into the transmission provider's EMS. We seek comment on whether changes are needed to the NERC Critical Infrastructure Protection (CIP) Reliability Standards or other industry practices to ensure the physical security and cybersecurity of the sensors, data communications, transmission line rating and forecasting systems, and EMS improvements used to implement a wind requirement. In particular, we seek comment on whether additional controls are necessary to validate that sensors are operating correctly and that any changes in ratings based on sensor data are appropriate for that particular transmission line, taking all relevant considerations into account. Further, we seek comment on whether entities should have a backup or other means to acquire the data or establish transmission line ratings if the DLR systems are compromised or not functioning properly.

b. Proposed Criteria To Identify Transmission Lines Subject to a Wind Requirement

114. As discussed in section II.C.3. Current Use of DLRs, research and select experience suggest that incorporating a wind requirement could provide significant benefits through more accurate line ratings. However, the record gathered through the NOI suggests that implementing the wind requirement would produce significant benefits only under certain circumstances.[146] We preliminarily agree with several commenters to the NOI that candidate transmission lines for a wind requirement should be identified through Commission-determined criteria[147] instead of relying on cost-benefit analyses. Thus, we preliminarily propose to apply the wind requirement only to transmission lines that meet certain wind speed and congestion thresholds and to limit the number of lines subject to the wind requirement in any one year.

i. Number of Transmission Lines Subject to the Wind Requirement Annually

115. We recognize that implementing the wind requirement may present some challenges (particularly during the initial implementation), such as siting

[145] *See, e.g.,* SPLIGHT Comments, Docket No. AD22–5, at 4 (filed Mar. 21, 2024) (referencing ''software-only solutions [that can enable] DLR utilization across entire grid systems''); Renan Giovanini, *GE Digital Grid Software: Orchestrate the Clean Energy Grid,* General Electric presentation at FERC's Software Conference referencing sensor-free digital twin DLR at slide 6 (June 27, 2023), *https://www.ferc.gov/media/renan-giovanini-general-electric-edinburgh-uk.*

[146] *See, e.g.,* APPA/LPPC Comments, Docket No. AD22–5, at 8–10,12 (filed Apr. 25, 2022); APS Comments, Docket No. AD22–5, at 4 (filed Apr. 25, 2022); DOE Comments, Docket No. AD22–5, Attachment A at ii (filed Apr. 25, 2022) (addressing the impacts of grid-enhancing technologies generally); AEP Comments, Docket No. AD22–5, at 10 (filed Apr. 25, 2022); EGM Comments, Docket No. AD22–5, at 8 (filed Apr. 22, 2022); LADWP Comments, Docket No. AD22–5, at 3 (filed Apr. 25, 2022); MISO Comments, Docket No. AD22–5, at 17–18 (filed Apr. 25, 2022); NRECA Comments, Docket No. AD22–5, at 14 (filed Apr. 25, 2022); NYTOs Comments, Docket No. AD22–5, at 11 (filed Apr. 25, 2022); PPL Comments, Docket No. AD22–5, at 9 (filed Apr. 25, 2022); PJM Comments, Docket No. AD22–5, at 2–3 (filed May 9, 2022); Southern Company Comments, Docket No. AD22–5, at 2–3 (filed Apr. 25, 2022); Tri-State Comments, Docket No. AD22–5, at 3 (Apr. 25, 2022); WATT/CEE Comments, Docket No. AD22–5, at 10 (filed Apr. 25, 2022).

[147] *See, e.g.,* BPA Comments, Docket No. AD22–5, at 10–11 (filed Apr. 25, 2022); CAISO Comments, Docket No. AD22–5, at 3 (filed Apr. 25, 2022); Certain TDUs Comments, Docket No. AD22–5, at 7 (filed Apr. 25, 2022); EGM Comments, Docket No. AD22–5, at 5–6 (filed Apr. 22, 2022); PJM Comments, Docket No. AD22–5, at 5–9 (filed May 9, 2022).

and installing sensors, particularly in remote locations, integrating DLRs with existing operations, and ensuring secure data communication and cybersecurity.[148] Thus, in order to ensure that any wind requirement is implemented in a reliable and effective manner, we preliminarily propose to limit the number of transmission lines on which a transmission provider must implement the wind requirement in any given year. We preliminarily propose that such a limit account for the fact that larger transmission providers tend to have more resources to implement the wind requirement than smaller transmission providers. With that in mind, we preliminarily propose to require that, for transmission providers with transmission lines subject to the wind requirement, transmission providers apply the wind requirement to, at least, a number of transmission lines equal to 0.25% (or 1 in 400) of that transmission provider's Commission-jurisdictional transmission lines, rounded up to the next whole number.[149] Alternatively, we seek comment on whether the minimum number of lines that a transmission provider must apply the wind requirement in an implementation cycle should be based on a percentage of lines that meet the wind and congestion thresholds rather than, as proposed above, a percentage of all lines. We anticipate that, after initial implementation, transmission providers will have the experience necessary to apply the wind requirements on more lines per year. We are also concerned that applying the wind requirements to only 0.25% of the transmission provider's total transmission lines per year will be too slow of a pace. Accordingly, we seek comment on the best approach to increasing the requirement. We seek comment on whether the Commission should increase the percentage of lines to which transmission providers must apply the wind requirements, for any transmission lines that meet the thresholds (*i.e.,* 0.25% of lines in years 1 and 2 after implementation, 0.5% of lines in years 3 through 5, and 1% of lines in ensuing years)? Alternatively, we seek comment on whether the Commission should select a time upon which transmission providers must incorporate the wind requirement to all lines that meet the wind speed and congestion thresholds (*i.e.,* at least 0.25% per year for the first five years after implementation, but all lines that meet the thresholds must apply the wind requirement by year six). Further, as discussed below, transmission providers would be required to implement the wind requirement only on transmission lines that meet both a wind speed threshold and a congestion threshold.

116. For purposes of counting a transmission provider's total number of transmission lines and determining the number of transmission lines that would be subject to a wind requirement in a given year, we preliminarily propose to define a single transmission line as the transmission conductor that runs between its substation or switchyard start and end points (*e.g.,* dead-end structures). Other transmission facilities and equipment, such as circuit breakers, line traps, and transformers, would not count toward the transmission provider's total number of transmission lines. We seek comment on whether we should instead count the total number of transmission facilities based on the number of pieces of individually rated Commission-jurisdictional transmission equipment, as identified by the transmission provider and included in the database of transmission line ratings.[150] In other words, the number of transmission lines would be approximated based on the size of the transmission line ratings database developed for Order No. 881 compliance for a given transmission provider.

117. We seek comment on the preliminary proposal to require that transmission providers implement the wind requirement, for any transmission lines that meet the thresholds, on at least 0.25% of their transmission lines in each annual cycle. We seek comment on approximately how many jurisdictional transmission lines 0.25% represents, and how many transmission lines the average transmission provider operates. We seek comment on whether the Commission should adopt a different initial annual percentage. Alternatively, should the Commission consider a requirement for transmission providers, after a few years of DLR experience, to review their pace of implementation? We also seek comment on whether the Commission would need to adjust this approach if it determines that sensors are not needed for the wind requirement. We seek comment on whether we should consider alternative approaches to limiting a transmission provider's annual implementation requirements, such as limits based on the peak load on the transmission provider's transmission system or other appropriate criteria or metrics. We also seek comment on whether and how considerations such as staffing, supply chains, vendor availability, and limited experience with sensor technology for many transmission providers should factor into any such annual limitation on implementation of the wind requirement. We also seek comment on the appropriateness of establishing a limit on the number of transmission lines subject to a wind requirement.

ii. Wind Speed Threshold

118. We preliminarily propose to apply a wind requirement only to transmission lines where at least 75% of the length of the transmission line is located in areas with historical average wind speeds of at least 3 meters per second (m/s) (6.7 miles per hour) measured at 10 meters above the ground, roughly the height of most transmission lines. While we believe that requiring application of a wind speed threshold over the entire length of the line could be too limiting, ultimately excluding transmission lines where application of the wind requirement would yield net benefits, we also believe that including too long of a non-windy portions of the line will cause those segments to bind more often and limit the additional capacity from the wind requirement. Thus, we have proposed 75% of the line length located in areas with wind as the threshold. In NOI comments, WATT/CEE suggests using a similar wind speed threshold of 4 m/s.[151] Based on outreach and further research, however, we preliminarily propose a wind speed threshold of 3 m/s, on average.[152]

119. We note that historical wind speed data are published in graphical and raster format for the continental United States by the National Renewable Energy Laboratory

[148] *See, e.g.,* Order No. 881, 177 FERC ¶ 61,179 at P 254; AEP Comments, Docket No. AD22–5, at 5 (filed Apr. 25, 2022); APPA/LPPC Comments, Docket No. AD22–5, at 3–7 (filed Apr. 25, 2022), BPA Comments, Docket No. AD22–5, at 7–8 (filed Apr. 25, 2022).

[149] For example, for a transmission provider with 1,130 transmission lines in a given year, 0.25% of its lines would be (0.0025) * (1,130) = 2.825 lines. As such, that transmission provider would not be required to implement the wind requirement on more than 3 of its transmission lines in that year, even if more than 3 of its transmission lines meet both a wind speed threshold and a congestion threshold. Transmission providers could, of course, voluntarily implement the wind requirement on additional transmission lines in any given year, but under this preliminary proposal they would not be *required* to do so.

[150] *See* Order No. 881, 177 FERC ¶ 61,179 at PP 330, 336–340.

[151] WATT/CEE Comments, Docket No. AD22–5, at 7 (filed Apr. 25, 2022).

[152] *See, e.g.,* Jake Gentle, *et al., Forecasting for Dynamic Line Ratings,* Idaho National Laboratory presentation at FERC DLR Workshop at slide 13 (Sept. 10, 2019), *https://www.ferc.gov/sites/default/files/2020-09/Gentle-INL.pdf.*

(NREL),[153] and we preliminarily propose that transmission providers use this NREL data source as the basis for implementing the wind speed threshold.

120. We seek comment on the proposed wind speed threshold of 3 m/s, on average, including whether another wind speed would be a more appropriate threshold. We also seek comment on the proposal to apply the wind requirement only on transmission lines where at least 75% of the transmission line length is located in areas with average wind speeds at or above the threshold, including whether another approach to applying the wind speed threshold would be more appropriate for transmission lines located in areas both above and below the threshold. Further, we seek comment on the preliminary proposal to require that transmission providers use NREL data for historical wind speeds at 10 meters above the ground for purposes of evaluating whether a transmission line is above or below the wind speed threshold, and whether an alternative data source would be more appropriate.

121. Finally, we acknowledge that wind direction is another important factor. Wind moving perpendicular to a transmission line cools the line much more effectively than wind moving parallel to the line. However, we preliminarily find that establishing a threshold that includes an average historical wind direction would be much more burdensome to calculate because it would require that the transmission provider determine the wind direction relative to the position of each transmission line. We seek comment on whether wind direction should also be considered when identifying transmission lines subject to a wind requirement, and if so, how such consideration should be structured and what data sources should be used.

iii. Congestion Threshold

122. We preliminarily propose to use congestion caused by a transmission line rating as a second threshold for identifying the transmission lines that would be subject to a wind requirement. Below, we discuss how to calculate a congestion value for each transmission line in RTO/ISO regions and, separately, in non-RTO/ISO regions, and how to establish a threshold to identify congested transmission lines in each region. Transmission lines that have no congestion or congestion levels below the proposed threshold would not be subject to any wind requirement even if they meet the wind speed threshold because, absent sufficient levels of congestion, we do not expect the benefits resulting from a more accurate transmission line rating to exceed the costs.

(a) RTO/ISO Regions

(1) Congestion Costs

123. We seek comment on the appropriate congestion cost threshold to use in the RTO/ISO regions. In response to the NOI, some commenters propose to directly use congestion costs to indicate which transmission lines should be subject to a DLR requirement in RTO/ISO regions, and even propose specific annual congestion cost thresholds. At the low end of the range of suggestions, WATT/CEE and Clean Energy Parties recommend requiring DLRs on any transmission line with congestion costs of at least $500,000 over the past year.[154] Citing the Midcontinent Independent System Operator, Inc. transmission owners' cost estimate of $100,000–$200,000 for DLR implementation per transmission line, WATT/CEE argues that this threshold would allow customers to break even on DLR installations within approximately two years.[155] At the high end of the range of suggestions, PJM recommends requiring DLRs on any transmission line with annual congestion costs of at least $2 million.[156]

124. At this point, the Commission has a limited record on the best approach for calculating congestion costs in RTOs/ISOs for purposes of defining a congestion threshold for a wind requirement. As discussed above in section II.D.2. Existing Data Reporting on Congestion, or Proxies of Congestion, RTOs/ISOs regularly compute and publish various congestion metrics, but these metrics generally relate to marginal congestion costs rather than the total congestion costs caused by a transmission constraint. Thus, we seek comment on what approaches to calculating or estimating congestion costs caused by a transmission constraint would be most appropriate to use as part of a congestion threshold for a potential wind requirement in RTOs/ISOs. Relatedly, we seek comment on whether congestion costs caused by a transmission constraint should be determined based on the real-time markets, day-ahead markets, or a combination of the two.

125. Further, we seek comment on what congestion threshold the Commission should establish in RTO/ISO regions for a potential wind requirement, recognizing that the appropriate level of the congestion threshold could vary depending on the method used to calculate congestion costs. For example, were the Commission to use an annual congestion method as assumed by some commenters in response to the NOI, we seek comment on the values proposed and approximately how many transmission lines would meet the various thresholds. We note that WATT/CEE proposed $500,000 per year,[157] and PJM proposed $2 million per year.[158] Alternatively, as proposed by several commenters to the NOI, a congestion threshold could be set so that only transmission lines that have an average annual congestion cost of $1 million or more during the data collection period, discussed below in section IV.B.3. Phased-In Implementation Timeframe for the Wind Requirement, would be subject to the wind requirement. We also seek comment on whether the annual threshold should be annually adjusted for inflation; if so, how; and whether that adjustment should vary based on the method used for calculating congestion costs.

126. We seek comment on how RTOs/ISOs should measure congestion costs at interties and whether the same congestion threshold should be used for both intertie and internal congestion costs measurements. We also seek comment on how entities in non-RTO/ISO market constructs, such as the Western Energy Imbalance Market, should measure congestion costs at their interties.

127. Finally, we seek comment on whether a different congestion threshold would be appropriate if it is determined that the wind requirement does not require sensors. If the wind requirement can be met without sensors, this may lower the costs necessary to comply with the requirement. The lower costs may in turn provide more net benefits at lower levels of congestion.

(b) Non-RTO/ISO Regions

(1) Limiting Element Rate

(i) Overview

128. In non-RTO/ISO regions, congestion costs are not reflected separately as a component in market

[153] NREL, *Geospatial Data Science: Wind Resource Maps and Data, https://www.nrel.gov/gis/wind-resource-maps.html.*

[154] Clean Energy Parties Comments, Docket No. AD22–5, at 8 (filed Apr. 25, 2022); WATT/CEE Comments, Docket No. AD22–5, at 6 (filed Apr. 25, 2022).

[155] WATT/CEE Comments, Docket No. AD22–5, at 6 (filed Apr. 25, 2022).

[156] PJM Comments, Docket No. AD22–5, at 9 (filed May 9, 2022).

[157] WATT/CEE Comments, Docket No. AD22–5, at 6 (filed Apr. 25, 2022).

[158] PJM Comments, Docket No. AD22–5, at 9 (filed May 9, 2022).

prices and are not typically published in reports. Based on available information (at least some of which is currently publicly reported in some form,[159] and some of which is available to transmission providers but not currently published), we preliminarily propose a new metric to serve as a proxy for congestion in these regions—a Limiting Element Rate (LER). The LER metric would express, as an average rate (in MWh/year), the adverse impacts on transmission service due to a transmission line rating serving as a limiting element. Below we discuss how a transmission provider would calculate the LER, including data to be collected for certain ''triggering events,'' what LER metric threshold would be appropriate to identify transmission lines that are sufficiently congested to be subject to a wind requirement, and whether there are alternatives measures of congestion to identify transmission lines that should be subject to a wind requirement.

(ii) Triggering Events

129. We preliminarily propose to require that transmission providers record information for five types of triggering events where firm transmission service is denied or disrupted because of a transmission line's line rating. This information would provide the basis to identify transmission lines that are subject to a wind requirement.

130. In particular, the five events where firm transmission service is denied or disrupted because of a transmission line's line rating are: (1) denials of requested firm point-to-point transmission service; (2) denials of requests to designate network resources or load; (3) curtailment of firm point-to-point transmission service under section 13.6 of the *pro forma* OATT; (4) curtailment of network integration transmission service or secondary network integration transmission service under section 33 of the *pro forma* OATT; and/or (5) redispatch of network integration transmission service or secondary network integration transmission service under sections 30.5 and 33 of the *pro forma* OATT.

131. While we preliminarily propose to reflect each hour of a firm point-to-point transmission service reservation that is denied in the calculation of LER, in practice transmission customers do not typically schedule transmission service for every hour of their long-term reservations. For example, a transmission customer requesting a 100 MW reservation for annual transmission service may intend to use that service only during select hours totaling only six months of that year. Recognizing that fact, we seek comment on whether, for denials of requested firm point-to-point transmission service, the number of hours reflected in the LER calculations should reflect a discount from the number of hours reflected in the actual request. If so, we seek comment on what such discount factor(s) should be, and whether a specific discount factor should apply to all such denied firm point-to-point services, or if such a discount factor should vary by service type (daily, weekly, monthly, or yearly) to reflect how different service types might be scheduled at different rates.

132. We seek comment on whether it would be appropriate to include a sixth triggering event as a proxy for congestion in the LER. This event would account for times when ATC in the operating hour [160] is less than or equal to 25% of TTC.[161] Such ''low ATC events'' would be limited to events on paths that meet the definition of a ''posted path'' under § 37.6(b)(1)(i) of the Commission's regulations. Accounting for low ATC events would be intended to capture instances when such low ATC could dissuade potential transmission customers from making a transmission service request in the first place. We seek comment on whether, and to what extent, a transmission line's low operating-hour ATC indicates congestion in any given hour, such that it should reasonably be factored in as a proxy for congestion that may trigger the wind requirement. We also seek comment on other triggering events that the Commission should consider.

(iii) Data To Be Collected and Reported

133. For any triggering event, we preliminarily propose to require the transmission provider to record the: (1) date/time of the record being added to its database of transmission line ratings; [162] (2) dates and times of the start and end of the event; [163] (3) event type; (4) specification of the transmission line with a transmission line rating that was the limiting element causing the event; and (5) MWh of transmission service (or potential transmission service) that was impacted by the event.

134. The details of how the transmission provider would determine the impacted MWh vary by event type. For instances of denied firm point-to-point service, the transmission provider would determine the impacted MWh by multiplying the MW of the service requested by the duration of the request in hours.[164] If, instead of a complete denial of requested point-to-point service, a lower level of interim service is granted, then the MW value used in such a calculation would reflect only the portion of the original requested service deferred or not granted.[165] For instances of curtailed or redispatched point-to-point or network transmission service, the transmission provider would determine the impacted MWh by multiplying the MW curtailed or redispatched by the duration of the event in hours.[166] If, in such an instance, the MW curtailed or redispatched varies during the duration of the curtailment or redispatch, then the transmission provider may use an average MW value, or record the different hours or periods as different events. We preliminarily propose that transmission providers be required to reflect in such determinations any curtailments made as part of conditional firm transmission service provided under section 15.4 of the *pro forma* OATT. Finally, for instances of denied requests to designate new network resources or load without an end date, we preliminarily propose to reflect that such designations are generally long-term events by considering such denied requests to have a duration of 180 days (4,320 hours).[167] We seek comment on

[159] For example, limiting element data are already required to be made publicly available for certain constrained paths under § 37.6(a)(2)(ii) of the Commission's regulations. 18 CFR 37.6(a)(2)(ii) (2023).

[160] Either the operating hour or the future hour closest to the operating hour for which the transmission provider calculates ATC, hereafter simply ''operating hour'' for conciseness.

[161] This approach reflects that the Commission's regulations already consider posted paths that have an ATC that is less than or equal to 25% of TTC to be ''constrained.'' *See* 18 CFR 37.6(b)(1)(ii).

[162] *See infra* P 156.

[163] For denials or curtailments of service the date/time would be the date/time for which the service was requested.

[164] For example, if a request for 100 MW of three weeks of weekly firm point-to-point transmission service were denied, the MWh impacted would be determined as (100 MW) * (3 weeks) * (7 days/week) * (24 hours/day) = 50,400 MWh.

[165] For example, if in the proceeding example 75 of the requested 100 MW were ultimately granted, then the MWh impacted would be determined as (25 MW) * (3 weeks) * (7 days/week) * (24 hours/day) = 12,600 MWh.

[166] For example, if a transmission provider curtailed an instance of transmission service by 25 MW for a period of 2 hours, then the impacted MWh would be determined as (25 MW) * (2 hours) = 50 MWh. Similarly, if a transmission provider redispatched down one if its network customer's network resources by 75 MW for 2 hours, then the impacted MWh would be determined as (75 MW) * (2 hours) = 150 MWh.

[167] For example, if a request to designate a network resource with a capacity of 500 MW is denied, then the impacted MWh would be determined as (500 MW) * (4,320 hours) = 2,160,000 MWh.

the use of this assumed duration, or whether a different assumed duration or another approach would result in a better consideration of the congestion reflected in denials of requests to designate network resources or load.

(iv) LER Threshold

135. We seek comment on what LER metric threshold would be appropriate to identify transmission lines that are sufficiently congested to be subject to a wind requirement, along with an estimate of how many transmission lines would meet any discussed threshold. As proposed above, the LER measurement that will be compared to such a threshold would be measured in impacted MWh. One potential approach is to attempt to identify an LER threshold that would be the rough equivalent of any congestion cost threshold that we might ultimately adopt for RTO/ISO regions (discussed above), given an assumed cost of impacted MWh. For example, if one assumes a cost of an impacted MWh of $100, then an LER threshold that would be the rough equivalent of a $1 million RTO/ISO congestion cost threshold would be calculated as ($1,000,000)/($100/MWh) = 10,000 MWh. However, this would only be a rough equivalence because what is measured by LER and the congestion cost that we propose to be measured for RTO/ISO regions are not reflective of the exact same events, and any assumption for the cost of an impacted MWh will necessarily need to be some estimate of the average cost of such MWh. Another potential approach is to use hourly systemwide incremental costs, which are already required to be used for both energy imbalances under Schedule 4 and generator imbalances under Schedule 9 of the *pro forma* OATT, to calculate an estimated cost of impacted MWh.[168] We seek comment on the costs that transmission providers include in hourly energy or generator imbalance charges, in particular whether these charges reflect only the energy component or a full redispatch cost, including congestion and production costs. Finally, we seek comment on whether using a different value, or another approach altogether, to identify transmission lines that should be subject to a potential wind requirement would be appropriate.

(2) Potential Alternatives for Comment

136. We seek comment on alternatives to our preliminary proposal of using LER as a proxy for congestion in non-RTO/ISO regions. In particular, we seek comment on the possibility of using information that is currently non-public, such as redispatch costs, to measure actual congestion costs that are incurred in non-RTO/ISO regions.

(i) Non-RTO/ISO Congestion Costs

137. As an alternative to the LER metric, we seek comment on whether non-RTO/ISO regions could measure congestion costs to identify candidate transmission lines for a potential wind requirement. Under section 33.2 of the *pro forma* OATT, a transmission provider must perform redispatch of resources on a least-cost basis, without consideration of whether a resource is owned by the transmission provider or a network customer.[169] Based on this requirement, we believe that transmission providers consider redispatch costs for both network resources and their own resources serving their native load, although the information on such costs may currently be non-public. Such congestion costs could be measured within non-RTO/ISO regions for the purpose of identifying transmission lines that would benefit the most from a potential wind requirement. Because we believe such costs are formally tracked and associated with the limiting transmission line ratings necessitating each instance of redispatch, it should be possible to attribute redispatch costs to the particular transmission line whose transmission line ratings are causing such costs. We seek comment on using redispatch costs to measure congestion costs and to what extent this approach would be preferable to the LER approach. We seek comment on measuring congestion costs at intertie locations and whether redispatch costs could be used to identify interties that would benefit the most from a potential wind requirement.

138. We also seek comment on whether measuring congestion costs in non-RTO/ISO regions should be used in *conjunction* with an approach like the LER approach (*i.e.,* congested transmission lines would be identified through some combination of how much redispatch cost their transmission line ratings cause *and* how many MWh are impacted by denials, disruptions, etc.).[170] If using a combined approach, we seek comment on how these components should be used together, *e.g.,* how much weight each measure of congestion is given, to develop an overall indicator of how congested a transmission line in a non-RTO/ISO region is.

139. Finally, we seek comment on additional methods for calculating congestion costs both within non-RTO/ISO regions and at interties connecting with non-RTO/ISO regions. For instance, average hourly incremental/decremental cost (that transmission providers are required to use under *pro forma* OATT Schedules 4 and 9 in the calculation of hourly imbalances charges discussed above) or electricity hub prices could be used to estimate congestion costs.

c. Self-Exceptions From the Wind Requirement

i. Self-Exception Categories

140. We preliminarily propose to allow transmission providers to self-except a transmission line from the wind requirement if it determines, consistent with good utility practice: (1) that the transmission line rating is not affected by wind conditions; or (2) that implementing the wind requirement on such a transmission line would not produce net benefits. These self-exceptions recognize that there may be instances where the congestion threshold and wind speed threshold criteria identify transmission lines that would nonetheless not be good candidates for implementation of a wind requirement. For example, certain transmission lines that might not benefit from the wind requirement, such as a partially underground transmission line where the cable is the limiting element, may nonetheless trigger the proposed criteria. As another example, applying the wind requirement to a particular transmission line may only relieve thermal constraints slightly before a voltage or stability constraint bind, resulting in little value for the cost of implementing the wind requirement.

141. Under either self-exception category, a transmission provider would log the self-exception and justification in its transmission line rating database (as outlined below). This proposal is supported by NOI comments that argue a wind requirement should provide exceptions for cost, reliability, and other negative impacts, and assert that the

[168] *See Pro forma* OATT, Schedule 4 Energy Imbalance Service. ''The Transmission Provider may charge a Transmission Customer a penalty for either hourly energy imbalances under this Schedule [4] or a penalty for hourly generator imbalances under Schedule 9 for imbalances occurring during the same hour, but not both unless the imbalances aggravate rather than offset each other.'' *Id.*

[169] *Pro forma* OATT, section 33.2 (Transmission Constraints).

[170] We preliminarily assume, if a redispatch cost approach were used in conjunction with an LER approach, that the LER would be modified to (at a minimum) exclude consideration of the impacted MWh from redispatch of network resources, given that such events would already be reflected in terms of their redispatch cost.

cost exception should require a showing by the transmission provider.[171]

142. We seek comment on the concept of allowing a transmission provider to self-except transmission lines from the wind requirement.

143. The first self-exception category—that the transmission line rating is not affected by wind speed—is similar to the exception to the AAR requirement established by Order No. 881 and set forth in Attachment M of the *pro forma* OATT that permits transmission providers to use a transmission line rating that is not an AAR where the transmission line is not affected by ambient air temperature or solar heating.[172] We expect that the same (or largely the same) transmission lines that are excepted from Order No. 881's requirement to implement AARs or seasonal line ratings (because the transmission line is not affected by ambient air temperature) would be eligible for exception from the wind requirement under the first self-exception category. We seek comment on whether there are transmission lines whose transmission line ratings would not be affected by wind speed and whether the first self-exception category is appropriate in such cases.

144. To implement the second self-exception category, we preliminarily propose that transmission providers conduct a net benefit analysis that sums all of the anticipated benefits attributable to the implementation of the wind requirement on the relevant line and, similarly, sums all of the costs attributable to the wind requirement on the relevant line. If the benefits do not exceed the costs, then a transmission provider may self-except the transmission line. Examples of benefits that could be considered in a net benefit analysis include: production cost savings (including increased transmission capacity, reduced congestion costs, reduced dispatch costs, and other related factors), and deferred costs of new transmission lines. Examples of costs in a net benefit analysis include: the installation of sensors, as well as the communications equipment or other costs attributable to implementing the wind requirement at the specified location or on the specified transmission lines. We preliminarily propose that transmission providers would not include, in the net benefit analysis, costs that they must incur to implement DLRs generally, *i.e.,* for communication equipment needed for enterprise-wide DLR implementation, computer hardware and software, EMS, physical security, and cybersecurity protections. We seek comment on the net benefit analysis proposal, including the potential benefits and costs to include in the analysis; whether there are costs or benefits that should *not* be included in a net benefits analysis; whether the Commission should specify which costs and benefits can or should be included in a net benefits analysis; whether such determinations should be left to the transmission providers' discretion; and whether transmission providers should be required to specify in their tariffs which costs and benefits can or must be included in a net benefits analysis. We also seek comment on whether benefits attributable to a wind requirement and used in a net benefits analysis should be limited to a particular time horizon, such as 10 years; or how transmission providers should attribute costs, including whether treatments such as amortization or depreciation would be appropriate, for purposes of the net benefits analysis, and the relevant time horizon.

145. We also preliminarily propose that a transmission provider that makes a self-exception finding must document, in its database of transmission line ratings and transmission line rating methodologies on OASIS or another website with authentication control including multi-factor authentication,[173] any exceptions to the wind requirement, including the nature of and basis for each exception, the date(s) and time(s) that the exception was initiated, and (if applicable) documentation of the net benefit analysis calculation, methodology, and assumptions. We seek comment on this approach to justifying and documenting self-exceptions.

146. Under this preliminary proposal, a transmission provider would not be required to implement the wind requirement on a specific transmission line if it takes a self-exception for that particular transmission line, but a self-exception would not reduce the transmission provider's overall implementation burden with respect to the wind requirement that year. A transmission provider would still be required to implement the wind requirement on its next most congested transmission line, unless no further transmission lines met the criteria for the wind requirement that year.

147. Furthermore, under our preliminary proposal, a transmission provider would be required to reevaluate and log any exceptions taken every year during the annual wind requirement implementation cycles for the wind requirement as discussed in the IV.B. Compliance and Transition and Implementation Timelines section. In some instances, this proposal may merely require a review of the inputs and assumptions to the original self-exception analysis, to verify that they have not changed. In other instances, if such inputs and assumptions have changed, then analyses would need to be updated. If the technical basis for an exception is found to no longer apply, the transmission provider would be required to update the relevant transmission line rating(s) in a timely manner. We seek comment on this proposal for annual re-evaluations of self-exceptions, including whether another timeframe is more appropriate. We seek comment on the information that should be included in the transmission line rating log to justify a self-exception under either self-exception finding.

148. We note that Order No. 881 and the System Reliability section of the *pro forma* OATT Attachment M provides for the temporary use of a transmission line rating different than would otherwise be required if such rating is determined to be necessary to ensure the safety and reliability of the transmission system.[174] Under this preliminary proposal, we would maintain that System Reliability provision in Attachment M, which would similarly apply to any

[171] ELCON Comments, Docket No. AD22–5, at 8–9 (filed Apr. 25, 2022); R Street Institute Comments, Docket No. AD22–5, at 5–6 (filed Apr. 26, 2022).

[172] *See* Order No. 881, 177 FERC ¶ 61,179 at P 227; *see supra* P 84 (discussing the self-exception that would apply to the proposed requirement to include solar heating in transmission line ratings).

[173] While prior Commission orders, including Order No. 881, have references to ''password-protected websites'' instead of website(s) with authentication control, NAESB standards that incorporate NIST standards require utilities to use authentication control, including multi-factor authentication, on their OASIS websites or any alternative websites. *See* National Institute of Standards and Technology, *NIST Special Publication 800–63B* (Oct. 2023), *https://pages.nist.gov/800-63-3/sp800-63b.html;* North American Energy Standards Board, *Standards for Business Practices and Communication Protocols for Public Utilities* 5 (Mar. 2020), *https://www.naesb.org/pdf4/naesb_033020_weq_version_003.3_report.pdf* (''In response, the subcommittees revised WEQ–002–5 to require transmission providers or the agent to whom a transmission provider has delegated the responsibility of meeting any requirements associated with OASIS, referred to as a Transmission Services Information Provider ('TSIP'), to apply industry-recognized best practices in the implementation and maintenance of OASIS nodes and supporting infrastructure. Included in these modifications is a requirement that TSIPs must implement guidelines for user passwords and authentication aligned with NIST SP 800–63B.''). As such, we believe that this text does not impose any new requirements on utilities. The Commission has adopted these NAESB standards. *See Standards for Bus. Pracs. & Communication Protocols for Pub. Utils.,* Order No. 676–J, 86 FR 29491 (June 2, 2021), 175 FERC ¶ 61,139 (2021).

[174] Order No. 881, 177 FERC ¶ 61,179 at P 232; *pro forma* OATT, attach. M (System Reliability).

transmission lines to which the wind requirement would otherwise apply.

ii. Challenges to Self-Exceptions

149. We propose to allow any person that disagrees with a transmission provider's self-exception to challenge that self-exception by filing a complaint with the Commission under FPA section 206. Examples of potential complaints concerning a transmission provider's self-exceptions could include that a transmission provider improperly claimed that the transmission line is not affected by wind speed, or that a transmission provider made a faulty demonstration that the transmission line ratings subject to wind requirement would not produce net benefits on the transmission line, such as through improper calculations of costs or benefits. The Commission could also institute an investigation under FPA section 206 on its own motion to examine any self-exception. We seek comment on whether there should be another means to challenge a self-exception.

d. Transmission Lines Formerly Subject to the Wind Requirement

150. In cases when a transmission provider determines that a transmission line subject to a wind requirement no longer exceeds the thresholds for high levels of congestion and wind speed, we preliminarily propose that the wind requirement no longer apply to the transmission line and that transmission providers will no longer be required to include wind conditions when calculating the transmission line rating. For example, the transmission provider would be permitted, *inter alia,* to decommission the sensors if any, on that transmission line. Similarly, if a transmission provider determines that a transmission line previously subject to a wind requirement is no longer expected to produce net benefits, then we preliminarily propose that the wind requirement no longer apply to the transmission line and that the transmission provider will no longer be required to include wind measurements when calculating the transmission line rating and the transmission provider would be permitted to decommission any sensors on that transmission line. We further preliminarily propose that, when calculating the net benefits of a wind requirement to determine if a particular transmission line should be subject to the wind requirement sunk costs, such as past installations of sensors, should not be included. Under the preliminary proposal, such transmission providers would be required to document their decision to stop applying the wind requirement and to decommission any sensors and provide a justification. Similar to the proposed self-exception process, transmission providers would log such decision, including the nature of and basis for each decommissioning, the date(s) and time(s) that the decommissioning was initiated, and (if applicable) documentation of the net benefit analysis calculation, methodology, and assumptions in their database of transmission line ratings and transmission line rating methodologies on OASIS or another website with authentication control including multi-factor authentication at least one year prior to the decommissioning. A justification could be, for example, that a transmission line no longer meets the congestion or wind speed thresholds or that the wind requirement no longer provides net benefits on a transmission line. Such justifications for removing the wind requirement would be subject to the same opportunities to be challenged pursuant to FPA section 206 discussed above for the self-exception process. Also, a goal of applying DLRs, including the wind requirement, to a transmission line is to reduce congestion. It stands to reason that a transmission line that is subject to the wind requirement may experience less congestion because of the wind requirement, such that it no longer meets the congestion threshold. In such cases, it may be counterintuitive to remove the wind requirement. As such, we preliminarily propose that any decision to remove the wind requirement from a transmission line must examine and compare the congestion with the wind requirement in place against the estimated congestion if the wind requirement were not in place. We seek comment on this preliminary proposal for a decommissioning process. Further, we seek comment on the costs and other burdens associated with decommissioning DLR equipment. We also seek comment on whether the threshold criteria should be required to no longer be met for a longer period of time (*e.g.,* 5 years) before decommissioning is allowed.

e. Potential Transparency Reforms and Request for Comment

151. We preliminarily propose new transparency reforms, including requirements to enhance data reporting practices related to congestion in non-RTO/ISO regions to identify candidate transmission lines for a wind requirement, and posting and retention of congestion data in both RTO/ISO and non-RTO/ISO regions. The proposed reforms will provide transparency into the transmission providers' identification of transmission lines that would be subject to the wind requirement and enable the Commission and stakeholders to verify the transmission providers' analysis. Order No. 881 already requires a database of transmission line ratings and methodologies to be posted.[175] This posting requirement would extend to transmission line ratings on transmission lines subject to the solar and wind requirements as well.

152. Some commenters in the NOI proceeding support adopting the same transparency measures for transmission lines subject to a wind requirement as the Commission adopted in Order No. 881.[176] In addition, some commenters support going further and requiring the filing and posting of informational reports on which transmission lines meet the Commission's wind requirement criteria, as well as the transmission line ratings and methodologies used for implementation of the wind requirement.[177]

153. As noted in section III. The Potential Need for Reform above, we preliminarily find that existing transmission line ratings and transmission line rating methodologies may result in unjust and unreasonable wholesale rates that result from inaccurate transmission line ratings. In addition to the preliminarily proposed reforms described above, we make a concomitant preliminary finding that certain transparency reforms are necessary to implement the preliminary proposal. In addition to the requests for comments on specific aspects of the preliminary proposal, we seek comment on whether the proposed data reporting practices related to congestion in non-RTO/ISO regions that would identify transmission lines that are candidates for a wind requirement and the posting

[175] *See* Order No. 881, 177 FERC ¶ 61,179 at PP 330, 336–340. The transmission provider must post the information on the password-protected section (or section subject to authentication control including multi-factor authentication) of its OASIS site or on another website with authentication control including multi-factor authentication. *Id.* P 336; *see supra* n.200.

[176] DC Energy Comments, Docket No. AD22–5, at 4 (filed Apr. 25, 2022); LADWP Comments, Docket No. AD22–5, at 4–5 (filed Apr. 25, 2022); PJM Comments, Docket No. AD22–5, at 6–7 (filed May 9, 2022); TAPS Comments, Docket No. AD22–5, at 8 (filed Apr. 25, 2022).

[177] DC Energy Comments, Docket No. AD22–5, at 5 (filed Apr. 25, 2022); ELCON Comments, Docket No. AD22–5, at 2, 8–9, 11 (filed Apr. 25, 2022); LADWP Comments, Docket No. AD22–5, at 4–5 (filed Apr. 25, 2022); R Street Institute Comments, Docket No. AD22–5, at 9 (filed Apr. 26, 2022); TAPS Comments, Docket No. AD22–5, at 7 (filed Apr. 25, 2022); WATT/CEE Comments, Docket No. AD22–5, at 9 (filed Apr. 25, 2022).

of underlying congestion data, as set forth below, would result in just and reasonable rates.

i. Potential Reforms to Congestion Data Collection

154. As preliminarily proposed above in section IV.A.3.b.iii.b.1. Limiting Element Rate, transmission providers would be required to maintain a database of the following events: (1) denials of requested firm point-to-point transmission service; (2) denials of requests to designate network resources or load; (3) curtailment of firm point-to-point transmission service under section 13.6 of the *pro forma* OATT; (4) curtailment of network integration transmission service or secondary network integration transmission service under section 33 of the *pro forma* OATT; and (5) redispatch of network integration transmission service or secondary network integration transmission service under sections 30.5 and 33 of the *pro forma* OATT. Specifically, as preliminarily proposed above, transmission providers would be required to record for each event: (1) date/time of the record being added to the database; (2) dates and times of the start and end of the event; (3) event type; (4) specification of the transmission line with a transmission line rating that was the limiting element causing the event; and (5) the MWh of transmission service (or potential transmission service) that was impacted by the event. We seek comment on this preliminary proposal to require transmission providers to record this LER metric data, including the changes in data collection practices it would cause, and the associated burden. We seek comment on whether data identifying limiting transmission lines during all the periods of congestion listed above already exist, and whether the above descriptions of those events (duration, energy impacted, etc.) are being recorded by transmission providers and/or posted in OASIS currently. We also seek comment on the challenges in data collection practices and associated burden required to record the alternative methods to estimate congestion costs in non-RTO/ISO regions and at non-RTO/ISO seams discussed above in section IV.A.3.b.iii.b.2.i Non-RTO/ISO Congestion Costs such as recording redispatch costs caused with a given transmission constraint.

155. As discussed below in section IV.4. Requirements for Reflecting Solar and/or Wind in Transmission Line Ratings in RTOs/ISOs, we preliminarily propose that RTOs/ISOs would use the LER metric only for congestion at their seams, and not on the internal transmission lines for which they have explicit congestion data. However, we also preliminarily propose to require that transmission providers in RTOs/ISOs maintain data on annual overall congestion costs caused by binding constraints on each transmission line. Finally, we also seek comment on whether any changes or additional data requirements would be needed to track congestion costs, or causes of congestion costs, in RTO/ISO regions.

ii. Posting of Congestion Data

156. Similar to the Commission's determination in Order No. 881, we preliminarily propose to require transmission providers to post on OASIS or another website with authentication control including multi-factor authentication the new congestion databases associated with this rulemaking, such as an LER metric database, with a data retention requirement of at least five years. We preliminarily find that, without further transparency, the Commission and market participants would not have the information needed to determine the transmission lines on which transmission providers in non-RTO/ISO regions are required to implement the wind requirement.

157. We seek comment on this congestion data transparency proposal, including whether the congestion data proposed to be recorded in the congestion databases or other elements should be posted on OASIS or another website with authentication control including multi-factor authentication. We also seek comment on posting on OASIS or another website with authentication control including multi-factor authentication the data associated with the alternative methods to estimate congestion costs in non-RTO/ISO regions and at seams with non-RTO/ISO regions discussed above in section IV.A.3.b.iii.b.2.i Non-RTO/ISO Congestion Costs such as recording redispatch costs caused by a given transmission constraint. We also seek comment on whether posting of additional congestion cost data, beyond the overall congestion costs caused by binding constraints on each transmission line, should be required in RTO/ISO regions. We seek comment on whether a different data posting, access restrictions, and data retention requirement is appropriate.

iii. Posting of Transmission Line Ratings Subject to a Wind Requirement

158. In Order No. 881, the Commission required the maintenance and posting of all transmission line ratings in a line rating database.[178] That requirement would apply to any transmission line ratings under a potential final rule in this proceeding as well.[179]

159. However, given the unique circumstances surrounding a potential wind requirement, including the need to be able to evaluate the effectiveness of such a requirement, we preliminarily propose that, for transmission lines subject to a wind requirement, the transmission provider would be required to post the transmission line ratings for each period calculated both with *and without* the consideration of forecasted wind conditions. We preliminarily believe that the posting of both transmission line ratings for the periods in which the wind requirement applies would provide the transparency necessary to evaluate the effectiveness of implementing the wind requirement on each transmission line subject to the wind requirement. We seek comment on this proposed posting requirement.

4. Requirements for Reflecting Solar and/or Wind in Transmission Line Ratings in RTOs/ISOs

160. In Order No. 881, the Commission required AARs to be used (1) in the day-ahead and real-time energy markets, (2) in any reliability or intra-day reliability unit commitment processes, and (3) for transmission service over RTO/ISO seams.[180] The Commission declined to apply the AAR requirement to the evaluation of internal point-to-point or through-and-out transactions.[181] The Commission explained that the vast majority of energy transactions in RTOs/ISOs are executed and financially settled in the day-ahead and real-time markets, and thus requiring AARs to be used for internal point-to-point and through-and-out transactions would provide very little additional benefits in the RTO/ISO markets.[182]

161. For the solar requirement, which we propose to apply to all transmission lines, we preliminarily propose that RTOs/ISOs use transmission line ratings that reflect solar heating based on the sun's position and forecastable cloud cover in their day-ahead and real-time markets as well as for seams transactions that are near-term transmission service (*i.e.,* that start and

[178] Order No. 881, 177 FERC ¶ 61,179 at PP 330, 336; *see pro forma* OATT, attach. M (Obligations of Transmission Provider).

[179] *See pro forma* OATT, attach. M, Obligations of Transmission Provider; *see also* Order No. 881, 177 FERC ¶ 61,179 at PP 330, 336–340.

[180] Order No. 881, 177 FERC ¶ 61,179 at P 89.

[181] *Id.* P 134.

[182] *Id.*

stop within the next 10 days). We do *not* propose to require RTOs/ISOs to use such transmission line ratings for internal point-to-point transmission service or through-and-out service.

162. For the wind requirement, which we propose to apply only to select transmission lines, we preliminarily propose a different approach. Specifically, we preliminarily propose that RTOs/ISOs comply with the wind requirement [183] by using transmission line ratings that reflect up-to-date forecasts of wind speed and wind direction: (1) in their day-ahead and real-time markets; and (2) for seams transactions, internal point-to-point transmission service, and for through-and-out service that are 48-hour transmission services (*i.e.,* that start and end within 48 hours of the request). We preliminarily propose this broader requirement for these transmission lines because we preliminarily believe that the additional accuracy of using the transmission line ratings that incorporate the wind requirement on highly congested transmission lines may justify the burden.

163. We seek comment on these preliminary proposals for applying the proposed solar and wind requirements to transmission line ratings in RTOs/ISOs. In particular, we seek comment on whether RTOs/ISOs should instead *not* be required to apply the wind requirement for internal point-to-point and through-and-out transactions, consistent with the AAR requirements of Order No. 881 and the instant proposal for the potential solar requirement.

5. Implications for Emergency Ratings

164. In Order No. 881, the Commission required that transmission providers use uniquely determined emergency ratings for contingency analysis in the operations horizon and in post-contingency simulation of constraints. The Commission also required that such emergency ratings include separate AAR calculations for each emergency rating duration used.[184]

165. We preliminarily propose to require that all uniquely determined emergency ratings used for contingency analysis in the operations horizon and in post-contingency simulation of constraints must reflect solar heating based on the sun's position and up-to-date forecasts of forecastable cloud cover. We preliminarily find that applying the solar requirement to both normal and emergency ratings will enhance the accuracy of transmission line ratings. We seek comment on this proposed approach.

166. In addition, for transmission lines subject to a wind requirement, we preliminarily propose to require that all uniquely determined emergency ratings used for contingency analysis in the operations horizon and in post-contingency simulation of constraints must reflect up-to-date forecasts of wind speed and direction, consistent with the wind requirement for normal ratings. We preliminarily find that, for transmission lines that will be subject to a wind requirement, reflecting wind conditions in both normal and emergency ratings will enhance the accuracy of transmission line ratings. We seek comment on this proposed approach.

6. Confidence Levels

167. In statistical forecasting, ''quantile forecasting'' is the practice of forecasting upper or lower limits of a particular future observation.[185] Quantile forecasting is the type of forecasting typically involved with determining transmission line ratings: forecasters seek to predict the extreme values (upper or lower, depending on the variable) of weather variables that serve as inputs into transmission line rating calculations, and to calculate sufficiently conservative transmission line ratings from those forecasts. In quantile forecasting, a ''confidence level'' reflects how much certainty forecasters have that a particular observation will not exceed their forecast when the observation is repeated many times. For example, if each day a meteorologist publishes a forecast of next-day high temperatures, and the method for producing such forecast is designed to meet a 98% confidence level, then over time the corresponding observed high temperatures should be less than or equal to such forecasts 98% of the time.

168. We understand that line ratings always have an associated confidence level. Because such confidence levels are typically relatively high, such as 98%, in most instances the forecasted transmission line ratings are conservative, such that the observed weather (when that forecasted hour becomes the operating hour) is within the range predicted by the forecast. However, infrequently, as the forecast for a given hour is updated it could cause a transmission provider to have to manage (through curtailments or other actions) a reduction in transmission capability from what had been previously forecasted.

169. The Commission's outreach and research indicate that it is commonplace for DLRs to be calculated to a default confidence of 98%. We preliminarily believe that there may be some benefit to having a default confidence level for calculations of transmission line ratings subject to the solar and/or wind requirement across regions: first, to discourage the use of overly conservative confidence levels, which will erode the benefits of using weather forecasts; [186] and second, to ensure that sharply differing practices do not produce sharply different transmission line ratings.

170. Given the importance of confidence levels to transmission line ratings accuracy and reliability, we seek comment on whether the Commission should establish a default confidence level transmission providers are required to use when calculating transmission line ratings subject to the solar and/or wind requirement, unless they document a particular reason for needing and using a different confidence level. If so, we seek comment on what such a default confidence level should be, and how the use of confidence levels different from the default should be documented by transmission providers to justify such deviations.

171. If such a default confidence level were adopted, we preliminarily propose that it apply *not* to the underlying weather forecasts (wind speed, wind direction, ambient air temperature, solar heating, etc.) individually, but instead to the forecast of the transmission line rating overall. We preliminarily believe that applying the default confidence level to the underlying weather forecasts would result in a confidence level for the overall forecasted transmission line rating that is less than the default level. We seek comment on this proposal to apply any default confidence level to overall transmission line rating forecasts. We seek comment on what confidence levels are currently typically applied to different types of transmission line ratings.

[183] Transmission lines subject to the wind requirement are also subject to the solar requirement, as described above in section IV.A.3 Potential Wind Requirement.

[184] *Id.* P 297; *pro forma* OATT, attach. M, Obligations of Transmission Provider.

[185] *See, e.g.,* Electric Power Systems: Advanced Forecasting Techniques and Optimal Generation Scheduling, section 5 at 20 (João P.S. Catalão ed., 2017).

[186] In Order No. 881 the Commission acknowledged that ''transmission line ratings using unreasonably high forecast margins would also yield inaccurate transmission line ratings and, in turn, would result in an underutilization of existing transmission facilities, price signals based on less transfer capability than is truly available, and wholesale rates that are unjust and unreasonable.'' Order No. 881, 177 FERC ¶ 61,179 at P 52.

B. Compliance and Transition and Implementation Timelines

1. Pro Forma OATT Revisions and Implementation

172. We preliminarily propose to promulgate these potential reforms through revisions to the *pro forma* OATT, which is applicable to all transmission providers. We seek comment on this proposal including whether such requirements should be reflected in Attachment M of the *pro forma* OATT or elsewhere. Commenters are invited to propose *pro forma* OATT language, including proposed revisions to existing *pro forma* OATT language, and to explain why such language would be appropriate.

173. While the requirements we preliminarily propose here would be imposed on transmission providers, we recognize as we did in Order No. 881 that transmission owners determine transmission line ratings.[187] In many instances, particularly outside of RTOs/ISOs, the transmission provider and transmission owner are the same entity. However, within RTOs/ISOs and in limited other instances, the transmission provider and transmission owner are separate entities. For such instances, we preliminarily propose that the limit for how many transmission lines must apply the wind requirement, for any transmission lines that meet the thresholds, (*i.e.,* the proposed 0.25% of the total number of the transmission providers' transmission lines for the initial period) apply to each individual transmission owner and not to the transmission provider on an RTO-wide basis.[188] We also preliminarily propose that transmission owners will determine transmission line ratings for all of their transmission lines. We also propose to require transmission owners to provide their transmission line ratings and transmission line rating methodology to the transmission provider. We seek comment on this aspect of the preliminary proposal, including which responsibilities would or should be carried out by transmission providers and transmission owners, whether such roles and responsibilities should be set forth in *pro forma* OATT provisions or left to RTO/ISO compliance proceedings, and how transmission providers should ensure that transmission owners appropriately perform their responsibilities.

2. Implementation Timeframe for the Solar Requirement

174. Recognizing that the proposed solar requirement may not require installing sensors, we preliminarily propose that this requirement be met no more than twelve months after any final rule is published in the **Federal Register**. We seek comment on the timeframe necessary to implement the proposed solar requirement. We seek comment on whether the clear-sky component and cloud cover component of a proposed solar requirement should have different implementation deadlines.

3. Phased-In Implementation Timeframe for the Wind Requirement

a. Annual Wind Requirement Implementation Cycles

175. We preliminarily propose to require transmission providers to undertake an annual wind requirement implementation cycle. Starting with the effective date of any potential final rule, transmission providers would gather congestion data for each transmission line for one year, as described above in section IV.A.3.b.iii. Congestion Threshold, and determine during that year which of their transmission lines meet the wind speed threshold, as described above in section IV.A.3.b.ii. Wind Speed Threshold. Finally, for any transmission lines that meet the determined wind speed and congestion thresholds, transmission providers would have six months to implement the necessary systems, based on the minimum implementation requirement as described above in section IV.A.3.b.i. Number of Transmission Lines Subject to the Wind Requirement Annually, to implement the wind requirement. This proposal aims to provide ample time for transmission providers to use congestion data that reflect implementation of AARs as required by Order No. 881, while also ensuring that a wind requirement is applied to transmission lines that would benefit from a wind requirement within a reasonable timeframe. We seek comment on this proposed approach. We specifically seek comment on the duration of the data collection period, and implementation period. While we believe one year of congestion data will be sufficient for the first implementation cycle, we seek comment on whether this is the appropriate time period for data collection and whether the Commission should mandate a different timeframe for subsequent cycles (*e.g.,* for cycle two, whether transmission providers should consider two years of congestion data). We also seek comment on whether the Commission should set a limit on the vintage of the congestion data (*i.e.,* whether congestion data from five years ago is stale and no longer relevant). We also seek comment on how this approach should change if the Commission does not require sensors for the wind requirement.

176. Most commenters argue that the Commission should not require implementation of any DLR requirements until after transmission providers have implemented AARs in July 2025 and gained experience with the use of AARs.[189] While not explicitly tied to Order No. 881, the preliminary proposal, if adopted in a final rule, is intended to reflect the importance of having adequate data for the purpose of identifying transmission lines where the wind requirement would be implemented, particularly in light of the likely changing congestion patterns after the implementation of Order No. 881. The Commission seeks comment on when implementation of the proposal should commence.

177. We seek comment on the preliminary proposal to use an annual implementation cycle. We also seek comment on whether the proposed annual implementation period would accurately identify transmission lines for implementation of the wind requirement or if the Commission should require (or allow, if preferred) a lower frequency (such as every two to three years) of cycles and higher lines-per-cycle limit for the wind requirement cycle.

[187] *See* Order No. 881, 177 FERC ¶ 61,179 at P 140; *see also id.* P 300 (requiring transmission providers, where the transmission provider is not the transmission owner, to include in its compliance filing and implementation of *pro forma* Attachment M, that the transmission owner has the obligation for making and communicating to the transmission provider the timely calculations and determinations related to emergency ratings).

[188] For example, if an RTO has four transmission owners, each with 1,600 transmission lines, each transmission owner would be required to implement DLRs on at least four transmission lines per year (provided that at least that many transmission lines meet the criteria discussed above). The potential requirement would not be implemented by the RTO transmission provider on 16 transmission lines on an RTO-wide basis.

[189] AEP Reply Comments, Docket No. AD22–5, at 4–5 (filed May 25, 2022); APPA/LPPC Comments, Docket No. AD22–5, at 12–13 (filed Apr. 25, 2022); APS Comments, Docket No. AD22–5, at 14 (filed Apr. 25, 2022); CAISO Comments, Docket No. AD22–5, at 2 (filed Apr. 25, 2022); EEI Comments, Docket No. AD22–5, at 33 (filed Apr. 25, 2022); ELCON Comments, Docket No. AD22–5, at 12 (filed Apr. 25, 2022); ISO–NE Comments, Docket No. AD22–5, at 5–6 (filed Apr. 25, 2022); ITC Comments, Docket No. AD22–5, at 15 (filed Apr. 25, 2022); MISO Comments, Docket No. AD22–5, at 8 (filed Apr. 25, 2022); NYISO Comments, Docket No. AD22–5, at 1–2 (filed Apr. 25, 2022); Potomac Economics Comments, Docket No. AD22–5, at 3 (filed Apr. 26, 2022); Southern Company Comments, Docket No. AD22–5, at 11 (filed Apr. 25, 2022); Tri-State Comments, Docket No. AD22–5, at 4 (filed Apr. 25, 2022).

b. Transmission Provider Compliance Requirement

178. As described above in section IV.A.3.b.i. Number of Transmission Lines Subject to the Wind Requirement Annually, we preliminarily propose that transmission providers be required to implement the wind requirement on the whole number greater than 0.25% (or 1 in 400) of the transmission provider's transmission lines in each annual implementation cycle. As described above, transmission providers would be required to implement the wind requirement only on transmission lines that meet the congestion threshold and wind speed threshold.

179. We preliminarily propose to require transmission providers to implement the wind requirement on candidate transmission lines starting with the most highly congested transmission line (based on the congestion metric value, as discussed above) and moving on to the next most highly congested transmission line, and so on. This process would continue until either the yearly implementation requirement is met or there are no more candidate transmission lines waiting for implementation of the wind requirement.

c. Compliance for Transmission Providers That Are Subsidiaries of the Same Public Utility Holding Company

180. Transmission providers (or transmission owners in cases where the transmission owners and transmission provider are not the same entity) that are operating company subsidiaries of the same public utility holding company may operate their transmission facilities as a single transmission system. We seek comment on whether such transmission systems should be counted together for purposes of the transmission providers' compliance with any wind requirement, such as for counting the transmission providers' total number of transmission lines and for determining the number of transmission lines that would be included in the transmission providers' implementation cycle. This may result in implementation of the wind requirement being distributed unevenly across transmission providers that are operating company subsidiaries of the same public utility holding company. We seek comment on whether transmission providers in such situations, or the RTOs/ISOs of which they are members, should propose on compliance how they would treat such transmission providers and transmission systems.

V. Comment Procedures

181. The Commission invites interested persons to submit comments on the matters and issues proposed in this ANOPR to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due October 15, 2024 and Reply Comments are due November 12, 2024. Comments must refer to Docket No. RM24–6–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

182. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *https://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

183. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VI. Document Availability

184. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*).

185. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

186. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Rosner is not participating.

Issued: June 27, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A: List of Short Names/Acronyms of Commenters in Docket No. AD22–5

Short name/acronym	Commenter
AEP	American Electric Power Company, Inc.
APPA/LPPC	American Public Power Association (APPA) and the Large Public Power Council (LPPC).
APS	Arizona Public Service Company.
BPA	Bonneville Power Administration. The BPA Comments were filed as appendix B to the DOE Comments and were not submitted as a separate filing. Pagination cited in the ANOPR is internal to the BPA Comments.
CAISO	California Independent System Operator Corporation.
Certain TDUs	Certain Transmission Dependent Utilities consist of: Alliant Energy Corporate Services, Inc. (Alliant Energy), Consumers Energy Company (Consumers Energy), and DTE Electric Company (DTE Electric).
Clean Energy Parties	Natural Resources Defense Council, Sustainable FERC Project, Southern Environmental Law Center, Western Resource Advocates, Conservation Law Foundation, RMI, and Fresh Energy.
DC Energy	DC Energy, LLC.
DOE	United States Department of Energy.

Short name/acronym	Commenter
EEI	Edison Electric Institute.
EGM	Electrical Grid Monitoring.
ELCON	Electricity Consumers Resource Council.
Entergy	Entergy Services, LLC.
Idaho Power	Idaho Power Company.
ISO–NE	ISO New England Inc.
ITC	International Transmission Company d/b/a ITC Transmission, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.
LADWP	Los Angeles Department of Water and Power.
LineVision	LineVision, Inc.
MISO	Midcontinent Independent System Operator, Inc.
NERC	North American Electric Reliability Corporation.
NRECA	National Rural Electric Cooperative Association.
NYISO	New York Independent System Operator, Inc.
NYTOs	The New York Transmission Owners consist of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Niagara Mohawk Power Corporation d/b/a National Grid; New York Power Authority; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Long Island Power Authority; and Rochester Gas and Electric Corporation.
OMS	Organization of MISO States.
Potomac Economics	Potomac Economics, Ltd.
PPL	PPL Electric Utilities Corporation.
R Street Institute	R Street Institute.
Southern Company	Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, and Mississippi Power Company.
TAPS	Transmission Access Policy Study Group.
Tri-State	Tri-State Generation and Transmission Association, Inc.
TS Conductor	TS Conductor Corporation.
WATT/CEE	Working for Advanced Transmission Technologies (WATT) and Clean Energy Entities (CEE), which consist of American Clean Power Association, Advanced Energy Economy, and the Solar Energy Industries Association.

[FR Doc. 2024–14666 Filed 7–12–24; 8:45 am]

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