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Federal Register

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2024-0041]

RIN 3150-AL08

List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM 100 Cask System, Certificate of Compliance No. 1014, Renewed Amendment No. 16

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI-STORM 100 Cask System listing within the “List of approved spent fuel storage casks” to include Renewed Amendment No. 16 to Certificate of Compliance No. 1014. Renewed Amendment No. 16 revises the certificate of compliance to add a new overpack, include the ability to use computational fluid dynamics analysis to evaluate site-specific accident scenarios, modify the cask design, modify operational and testing requirements, and make changes to the final safety analysis report.

DATES: This direct final rule is effective September 9, 2024, unless significant adverse comments are received by July 25, 2024. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. 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. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC-2024-0041, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You can read a plain language description of this direct final rule at <https://www.regulations.gov/docket/NRC-2024-0041>. 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: Alexandra Terres, Office of Nuclear Materials Safety and Safeguards, telephone: 301-415-7000, email: Alexandra.Terres@nrc.gov and Yen-Ju Chen, Office of Nuclear Materials Safety and Safeguards, telephone: 301-415-1018, email: Yen-Ju.Chen@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2024-0041 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-2024-0041. Address questions about NRC dockets to Helen Chang, telephone: 301-415-3228, email: Helen.Chang@nrc.gov. For technical

questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- **NRC’s PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal Holidays.

B. Submitting Comments

Please include Docket ID NRC-2024-0041 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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. Rulemaking Procedure

This rule is limited to changes contained in Renewed Amendment No. 16 to Certificate of Compliance No. 1014 and does not include other aspects of the HI-STORM 100 Cask System design. The NRC is using the “direct final rule procedure” to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on September 9, 2024. However, if the NRC receives any significant adverse comment on this direct final rule by July 25, 2024, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register** or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that “[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the Nuclear Waste Policy Act states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the HI-STORM 100 Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1014.

IV. Discussion of Changes

On March 9, 2021, Holtec International submitted a request to the NRC to amend Certificate of Compliance No. 1014 for the HI-STORM 100 Cask System. Holtec International supplemented its request on the following dates: August 11, 2021, August 31, 2022, September 9, 2022, October 3, 2022, January 4, 2023, January 5, 2023, January 13, 2023, March 17, 2023, and September 20, 2023. On February 17, 2022, Holtec International requested to remove the certificate of compliance (CoC) reorganization, also known as graded approach, from this amendment.¹ The

¹ On May 6, 2021, Holtec submitted a request for Amendment No. 16 to CoC No. 1014 (Package ML21126A266, incoming letter ML 21126A267), which included the CoC reorganization, known as

Renewed Amendment No. 16 revises the certificate of compliance to:

- Add a new unventilated high density (UVH) overpack, HI-STORM 100 UVH, which includes high density concrete for shielding. The UVH is to be used with the MPC-32M and MPC-68M.
- Include the ability to use the computational fluid dynamics (CFD) analysis to evaluate site-specific fire accident scenario.
- Modify the vent and drain penetrations to include the option of a second port cover plate.
- Include the ability to use CFD analysis to evaluate site-specific burial under debris accident scenario.
- Include the ability to use water without glycol in the HI-TRAC water jacket during transfer operations below 32 °F based on the site-specific MPC total heat loads.
- Change the hydrostatic pressure test of the MPC acceptance criteria to be examination for leakage only.
- Remove post hydrostatic test liquid penetrant and magnetic particle examination.
- Reduce the minimum cooling time for pressurized water reactor fuel from 2 years to 1 year.

Renewed Amendment No. 16 also revises the final safety analysis report (FSAR), appendix 1.D, Specification for Plain Concrete in the HI-STORM Family of Overpacks, to enhance certain requirements, to add certain revised shielding assumptions following a significant thermal event, and to add critical characteristics for concrete employed in the HI-STORM 100 UVH System. Renewed Amendment No. 16 replaces the fuel qualification tables in the FSAR, chapter 2, and in the CoC, including the equation for calculation of the maximum allowable burnup as a function of the cooling time and cooling time dependent coefficients, with simpler sets of burnup and cooling time limits.

The changes to the aforementioned documents are identified with revisions bars in the margin of each document.

As documented in the preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. The NRC determined that this amendment does not reflect a significant change in design or fabrication of the cask. Specifically, the NRC determined that the design of

graded approach. On February 17, 2022, Holtec requested to remove the graded approach from Amendment No. 16 (ML22048C221). Therefore, this direct final rule, and its companion proposed rule only address Amendment No. 16 to CoC No. 1014, as updated.

the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Renewed Amendment No. 16 would remain well within the limits specified by 10 CFR part 20, “Standards for Protection Against Radiation.” Therefore, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

The NRC staff determined that the amended Holtec International HI-STORM 100 Cask System cask design, when used under the conditions specified in the certificate of compliance, the technical specifications, and the NRC’s regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into HI-STORM 100 casks that meet the criteria of Renewed Amendment No. 16 of Certificate of Compliance No. 1014.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the Holtec International HI-STORM 100 Cask System design listed in § 72.214, “List of approved spent fuel storage casks.” This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the “Agreement State Program Policy Statement” approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic

Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC’s regulations in 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the Holtec International HI-STORM 100 Cask System listing within the “List of approved spent fuel storage casks” to include Renewed Amendment No. 16 to Certificate of Compliance No. 1014.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the Holtec International HI-STORM 100 Cask System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, Renewed Amendment No. 16 revises the certificate of compliance as follows:

- Add a new UVH overpack, HI-STORM 100 UVH, which includes high density concrete for shielding. The UVH is to be used with the MPC–32M and MPC–68M.
- Include the ability to use the CFD analysis to evaluate site-specific fire accident scenario.
- Modify the vent and drain penetrations to include the option of a second port cover plate.
- Include the ability to use CFD analysis to evaluate site-specific burial under debris accident scenario.

- Include the ability to use water without glycol in the HI-TRAC water jacket during transfer operations below 32 °F based on the site-specific MPC total heat loads.

- Change the hydrostatic pressure test of the MPC acceptance criteria to be examination for leakage only. Remove post hydrostatic test liquid penetrant and magnetic particle examination.

- Reduce the minimum cooling time for pressurized water reactor fuel from 2 years to 1 year.

Renewed Amendment No. 16 also revises the final safety analysis report (FSAR) appendix 1.D, Specification for Plain Concrete in the HI-STORM Family of Overpacks, to enhance certain requirements, to add certain revised shielding assumptions following a significant thermal event, and to add critical characteristics for concrete employed in the HI-STORM 100 UVH System. Renewed Amendment No. 16 replaces the fuel qualification tables in the FSAR, chapter 2, and in the CoC, including the equation for calculation of the maximum allowable burnup as a function of the cooling time and cooling time dependent coefficients, with simpler sets of burnup and cooling time limits.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Renewed Amendment No. 16 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

Holtec International HI-STORM 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning

effects, fire, explosions, and other incidents.

This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Renewed Amendment No. 16 would remain well within the 10 CFR part 20 limits. The NRC has also determined that the design of the cask as modified by this rule would maintain confinement, shielding, and criticality control in the event of an accident. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences from, radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Renewed Amendment No. 16 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into Holtec International HI-STORM 100 Cask System in accordance with the changes described in proposed Renewed Amendment No. 16 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Renewed Amendment No. 16 to Certificate of Compliance No. 1014 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, "List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM 100 Cask System, Certificate of Compliance No. 1014, Renewed Amendment No. 16," will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec International. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if (1) it notifies the NRC in advance; (2) the

spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 31, 2000 (65 FR 25241), the NRC issued an amendment to 10 CFR part 72 that approved the HI-STORM 100 Cask System by adding it to the list of NRC-approved cask designs in § 72.214.

March 9, 2021, as supplemented on August 11, 2021, August 31, 2022, September 9, 2022, October 3, 2022, January 4, 2023, January 5, 2023, January 13, 2023, March 17, 2023, and September 20, 2023, Holtec International submitted a request to amend the HI-STORM 100 Cask System as described in Section IV, "Discussion of Changes," of this document.

The alternative to this action is to withhold approval of Renewed Amendment No. 16 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into Holtec International HI-STORM 100 Cask System under the changes described in Renewed Amendment No. 16 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1014 for the Holtec International HI-STORM 100 Cask System, as currently listed in § 72.214. The revision consists of the changes in Renewed Amendment No. 16 previously

described, as set forth in the revised certificate of compliance and technical specifications.

Renewed Amendment No. 16 to Certificate of Compliance No. 1014 for the Holtec International HI-STORM 100 Cask System was initiated by Holtec International and was not submitted in response to new NRC requirements, or an NRC request for amendment. Renewed Amendment No. 16 applies only to new casks fabricated and used under Renewed Amendment No. 16. These changes do not affect existing users of the Holtec International HI-

STORM 100 Cask System, and the current Amendment No. 15 continues to be effective for existing users. While current users of this storage system may comply with the new requirements in Renewed Amendment No. 16, this would be a voluntary decision on the part of current users.

For these reasons, Renewed Amendment No. 16 to Certificate of Compliance No. 1014 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined

licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./web link/ Federal Register citation
Amendment Request Documents	
Holtec International, Submittal of HI-STORM 100 Multipurpose Canister Storage System Amendment 16 Request, dated March 9, 2021.	ML21068A360 (package).
HI-STORM 100 Amendment 16 Responses to Requests for Supplemental Information, dated August 11, 2021	ML21223A045 (package).
HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batches 1 and 2), dated August 31, 2022.	ML22243A269 (package).
Holtec International, HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 2), dated September 9, 2022.	ML22249A347 (package).
HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 3), dated October 3, 2022.	ML22276A286 (package).
Holtec International, HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 4), dated January 4, 2023.	ML23005A000 (package).
Holtec International, HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 4)—Additional Supporting Document, dated January 5, 2023.	ML23005A273 (package).
Holtec International, HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 5), dated January 13, 2023.	ML23013A337 (package).
HI-STORM 100 Amendment 16 RAI 3–3 Clarification, dated March 17, 2023	ML23076A271 (package).
HI-STORM 100 Amendment 16 Responses to Second Round Requests for Additional Information, dated September 20, 2023.	ML23263B122 (package).
Holtec International—HI-STORM 100 Multipurpose Canister Storage System Amendment 19, dated February 17, 2022.	ML22048C222.
Technical Specifications	
Proposed Certificate of Compliance No. 1014, Amendment 16	ML23123A104.
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1014, Amendment 16	ML23123A105.
Proposed Technical Specifications, Appendix B, Certificate of Compliance No. 1014, Amendment 16	ML23123A106.
Proposed Technical Specifications, Appendix C, Certificate of Compliance No. 1014, Amendment 16	ML23123A107.
Proposed Technical Specifications, Appendix D, Certificate of Compliance No. 1014, Amendment 16	ML23123A108.
Proposed Technical Specifications, Appendix A–100U, Certificate of Compliance No. 1014, Amendment 16	ML23123A109.
Proposed Technical Specifications, Appendix B–100U, Certificate of Compliance No. 1014, Amendment 16	ML23123A110.
Preliminary Safety Evaluation Report	
Preliminary Certificate of Compliance 1014 Amendment 16 Safety Evaluation Report	ML23123A112.
Additional Documents	
Final Rule, “Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites,” published July 18, 1990.	55 FR 29181.
Final Rule, “List of Approved Spent Fuel Storage Casks: Holtec HI-STORM 100 Addition,” published May 1, 2000	65 FR 25241.
Revision to Policy Statement, “Agreement State Program Policy Statement; Correction,” published October 18, 2017.	82 FR 48535.
Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998	63 FR 31885.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC–2024–0041. In addition, the Federal rulemaking

website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2024–0041); (2) click the “Subscribe”

link; and (3) enter an email address and click on the “Subscribe” link.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians,

Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000, superseded by Renewed Initial Certificate Effective Date: August 2, 2023.

Amendment Number 1 Effective Date: July 15, 2002, superseded by Renewed Amendment Number 1 Effective Date: August 2, 2023.

Amendment Number 2 Effective Date: June 7, 2005, superseded by Renewed Amendment Number 2 Effective Date: August 2, 2023.

Amendment Number 3 Effective Date: May 29, 2007, superseded by Renewed Amendment Number 3 Effective Date: August 2, 2023.

Amendment Number 4 Effective Date: January 8, 2008, superseded by Renewed Amendment Number 4 Effective Date: August 2, 2023.

Amendment Number 5 Effective Date: July 14, 2008, superseded by Renewed

Amendment Number 5 Effective Date: August 2, 2023.

Amendment Number 6 Effective Date: August 17, 2009, superseded by Renewed Amendment Number 6 Effective Date: August 2, 2023.

Amendment Number 7 Effective Date: December 28, 2009, superseded by Renewed Amendment Number 7 Effective Date: August 2, 2023.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170); superseded by Amendment Number 8, Revision 1, Effective Date: February 16, 2016; superseded by Renewed Amendment Number 8, Revision 1 Effective Date: August 2, 2023.

Amendment Number 9 Effective Date: March 11, 2014, superseded by Amendment Number 9, Revision 1, Effective Date: March 21, 2016, as corrected on August 25, 2017 (ADAMS Accession No. ML17236A451); superseded by Renewed Amendment Number 9, Revision 1 Effective Date: August 2, 2023.

Amendment Number 10 Effective Date: May 31, 2016, as corrected on August 25, 2017 (ADAMS Accession No. ML17236A452); superseded by Renewed Amendment Number 10 Effective Date: August 2, 2023.

Amendment Number 11 Effective Date: February 25, 2019, as corrected (ADAMS Accession No. ML19343B024); superseded by Renewed Amendment Number 11 Effective Date: August 2, 2023.

Amendment Number 12 Effective Date: February 25, 2019, as corrected on May 30, 2019 (ADAMS Accession No. ML19109A111); further corrected December 23, 2019 (ADAMS Accession No. ML19343A908); superseded by Renewed Amendment Number 12 Effective Date: August 2, 2023.

Amendment Number 13 Effective Date: May 13, 2019, as corrected on May 30, 2019 (ADAMS Accession No. ML19109A122); further corrected December 23, 2019 (ADAMS Accession No. ML19343B156); superseded by Renewed Amendment Number 13 Effective Date: August 2, 2023.

Amendment Number 14 Effective Date: December 17, 2019, as corrected (ADAMS Accession No. ML19343B287); superseded by Renewed Amendment Number 14 Effective Date: August 2, 2023.

Amendment Number 15 Effective Date: June 14, 2021, superseded by Renewed Amendment Number 15 Effective Date: August 2, 2023.

Renewed Amendment Number 16 Effective Date: September 9, 2024.

Renewed Amendment Number 17 Effective Date: January 16, 2024.

Safety Analysis Report (SAR) Submitted by: Holtec International. *SAR Title:* Final Safety Analysis Report for the HI-STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Renewed Certificate Expiration Date: May 31, 2060.

Model Number: HI-STORM 100.

* * * * *

Dated: June 7, 2024.

For the Nuclear Regulatory Commission.

Raymond Furstenau,

Acting Executive Director for Operations.

[FR Doc. 2024–13984 Filed 6–24–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1807

RIN 1559–AA03

Capital Magnet Fund

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Interim rule with request for public comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Capital Magnet Fund (CMF), administered by the Community Development Financial Institutions Fund (CDFI Fund). This revised interim rule incorporates, among other things: revisions to certain definitions and CMF program requirements to improve the public's understanding and streamline the administration of CMF program requirements; revisions to project level requirements to better align CMF with other Federal housing programs; programmatic updates to address current business practices in the affordable housing industry; and consolidation of Economic Development Activities under a new section for a more comprehensive articulation of the criteria. This revised interim rule also reflects requirements set forth in a final rule, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, adopted by the Department of the Treasury on December 19, 2014 (hereafter referred to as the Uniform Administrative Requirements).

DATES: *Effective date:* June 25, 2024. All comments must be submitted on or before August 26, 2024. Comments can be submitted electronically via the e-Rulemaking Portal:

www.regulations.gov. The compliance date requirements for the collection of information in § 1807.902 is stayed indefinitely, pending Office of Management and Budget approval and assignment of an OMB control number.

ADDRESSES: You may submit comments concerning this revised interim rule via the Federal e-Rulemaking Portal at www.regulations.gov. Follow the instructions on the website for the submission of comments. In general, all comments will be available for inspection at www.regulations.gov. Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. Information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at <http://www.cdfifund.gov>.

FOR FURTHER INFORMATION CONTACT:

Andrew Schlack, Program Manager, Capital Magnet Fund, Community Development Financial Institutions Fund, by phone at 202-453-2047 or email at cmf@cdfi.treas.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Capital Magnet Fund (CMF) was established through the Housing and Economic Recovery Act of 2008 (the Act), Public Law 110-289, section 1131, as a trust fund to carry out a competitive grant program administered by the CDFI Fund. The mission of the CDFI Fund is to increase economic opportunity and promote community development investments for underserved populations and in distressed communities in the United States. Its long-term vision is an America in which all people have access to affordable credit, capital, and financial services. Between fiscal year 2010 and fiscal year 2023, the CDFI Fund administered a total of eight CMF Application rounds, obligating nearly \$1.1 billion in total awards. Since the last update to the rule in 2016, there have been changes in business practices in the affordable housing industry and regulatory requirements in other relevant Federal affordable housing assistance programs. Accordingly, the CDFI Fund is promulgating this revised interim rule: to streamline and update terms, concepts, and provisions in order to improve the public's understanding and

administration of the CMF program requirements; to better align the CMF with other Federal housing assistance programs; and to better reflect current business practices in the affordable housing industry.

Through the CMF, the CDFI Fund is authorized to make financial assistance grants to Certified Community Development Financial Institutions (CDFIs) and Nonprofit Organizations that have a principal purpose which is the development or management of affordable housing. CMF Awards must be used to attract private financing for and increase investment in the Development, Preservation, Rehabilitation, and Purchase of Affordable Housing primarily for Extremely Low-Income, Very Low-Income, and Low-Income Families and Economic Development Activities which, in conjunction with Affordable Housing Activities, will stabilize or revitalize a Low-Income Area or Underserved Rural Area.

All capitalized terms herein are defined in the definitions section of this revised interim rule, as set forth in 12 CFR 1807.104.

II. Comments on the February 8, 2016, Interim Rule

The current version of the rule is an Interim Rule that went into effect on February 8, 2016. The comment period for the February 8, 2016, Interim Rule ("2016 interim rule") ended on April 8, 2016. The CDFI Fund received eight written submissions.

A. 12 CFR 1807.104. Definitions

The CDFI Fund received two comments related to the definition of "Affordable Housing Fund." One commenter suggested that the definition should be revised to mean a revolving loan, grant, or investment fund that may be formed as a separate legal entity, managed by the Recipient and for which its capital is used to finance Affordable Housing Activities. A second commenter suggested that the term "Revolving Fund" be removed from the definition of "Affordable Housing Fund" since not all Affordable Housing Funds will revolve and noted there is a separate definition in the 2016 interim rule for a "Revolving Loan Fund." The CDFI Fund appreciates these comments and incorporates debt, grant, and equity investments into the definition of "Affordable Housing Fund." The CDFI Fund has also removed the phrase "revolving fund" from the definition, as reflected in the revised interim rule. Capitalizing a Revolving Loan Fund is now a separate Eligible Use, a newly defined term in the revised interim rule,

of the CMF Award. Additionally, the CDFI Fund notes that, under the revised definition of Affordable Housing Fund, Recipients may continue to capitalize an Affordable Housing Fund through a single purpose entity—which must be approved in advance by the CDFI Fund to carry out CMF activities—as further detailed under the terms of an Assistance Agreement. One commenter stated that the definition of "Homeownership" did not include cooperative or mutual housing. The CDFI Fund appreciates this comment and notes that under the 2016 interim rule, the definition of "Homeownership" includes ownership in a cooperative housing or mutual housing project as a qualified form of ownership notwithstanding the fact that the Recipient is required to determine whether such ownership or membership constitutes "Homeownership" under State law. To minimize confusion and alleviate concerns, the definition of "Homeownership" in the revised interim rule clearly states that Homeownership includes ownership interest in "condominium, cooperative, mutual housing, or ground lease title interest," as allowed under State law in Single-family housing or manufactured housing unit.

B. 12 CFR 1807.402—Affordable Housing Homeownership

Several commenters expressed concern that the recoupment and replacement requirement for Homeownership units sold before the end of the Affordability Period set forth at 12 CFR 1807.402(a)(5) in the 2016 interim rule could be a barrier when using the CMF Award to support Homeownership or result in disincentivizing mortgage originators from using the CMF Award in underwriting loans. One commenter suggested that deed-restricted sales capping the resale value of the Housing make selling such mortgages on the secondary market very challenging. The CDFI Fund appreciates the comments and recognizes the commenters' concerns related to the recoupment and replacement requirements in the 2016 interim rule. To alleviate some of the commenters' concerns, the CDFI Fund updated the redesignated 12 CFR 1807.402(a)(1)(vi) in the revised interim rule to require recoupment and replacement of the Housing only when the resale to an unqualified Homebuyer occurs any time during the first five years after the date of Purchase. When the resale to an unqualified Homebuyer occurs any time during year six through the end of the Affordability Period, the CMF investment will be recouped

proportionally; however, the Recipient is not required to replace the sold Housing unit with another Housing unit. Recoupment of the CMF investment is Program Income, as described in the Assistance Agreement.

One commenter suggested that the CDFI Fund create a separate allocation of the CMF Awards specifically for Homeownership applicants. The CDFI Fund appreciates the commenter's suggestion, but making an allocation of the CMF Awards to a select group of applicants is not authorized under the Act.

C. Economic Development Activities

Two commenters stated that there should not be a limit on the use of the CMF Award for Economic Development Activities, as the statute establishing the CMF does not set a limit. The commenters recommended that if a limit were to be established, it should be clarified in the Notice of Funds Availability and not in the regulations. The CDFI Fund appreciates the comments and finds limiting the use of the CMF Award for Economic Development Activities to no more than 30 percent to be appropriate and necessary. This ceiling ensures that the CMF Award is primarily used to maintain and increase affordable housing, which appears to be the more dominant focus of the Act. Further, this requirement has not proven to be a barrier to Recipients over the life of the program. Since the Fiscal Year 2016 CMF round, only \$3.5 million in CMF Awards have financed/supported 11 Projects with Economic Development Activities. This represents less than one percent of the CMF Awards disbursed to all CMF Projects. Section 1807.302(c) in the 2016 interim rule, which discusses the limitation on the use of the Economic Development Activities, has been redesignated as § 1807.403 in the revised interim rule.

One commenter suggested that the definition of "Economic Development Activity" not only apply to physical structures such as buildings, but also include loans to businesses for working capital and equipment. The CDFI Fund appreciates the comment and notes that while extending business loans plays an important role related to Economic Development Activities, the primary purpose of the CMF is to promote the increase of affordable housing by assisting Recipients with the purchase, development, preservation and rehabilitation of structures, such as Multi-family rental or Single-family housing, and related Community Service Facilities and real estate properties in order to revitalize

neighborhoods across the country. Accordingly, the CDFI Fund did not make that change to the definition of "Economic Development Activity" in the revised interim rule at § 1807.104.

Two commenters expressed concern with the definition of "Concerted Strategy" as it relates to Economic Development Activities. The commenters recommended that the CDFI Fund accept a less formal document to evidence a Concerted Strategy and remove the requirement that Economic Development Activities to be located physically proximate to affordable housing. The CDFI Fund appreciates the comments and notes that the definition of "Concerted Strategy" in the revised interim rule reinforces the standard that Economic Development Activities must be part of a local or regional planning document adopted by the jurisdiction. This ensures that the Economic Development Activities are consistent with and reflective of the local vision, are part of a strategy with a geographic focus, and that support synergy amongst community effort, private investment, and affordable housing. The CDFI Fund did not change the documentary requirement in the revised interim rule at § 1807.403(d). The definition of "Concerted Strategy" also remains unchanged in the revised interim rule at § 1807.104, and as further detailed in § 1807.403(c).

D. Preservation

Some commenters opined on the definition of "Preservation." These comments reflect concern that the current definition of "Preservation" could limit activities to only those that involve refinancing. Another commenter recommended that the current definition of "Preservation" clarify that acquisition-lending to purchase land or existing housing is an eligible use of the CMF Award. Other commenters suggested replacing the term "refinancing" with "recapitalizing," or adding "recapitalizing" to the definition of "Preservation." Other comments suggest allowing CMF Recipients to combine the CMF Awards with financial assistance from other CDFI Fund programs, as well as local and State affordable housing programs, as a way to fully capture all possible "Preservation" initiatives. The CDFI Fund appreciates the comments and notes that the definition of "Preservation" in the revised interim rule is modified to add the term "recapitalization" and reflects acquisition, refinancing, recapitalization, and/or rehabilitation of

Multi-family rental housing or Single-family housing as Eligible Uses of the CMF Award. Recipients can use the CMF Award in concert with financial assistance from local and State affordable housing programs, as well as with other CDFI Fund programs subject to the restrictions provided in the respective Assistance Agreements designed to avoid duplication or over-subsidization. The revised interim rule further clarifies that "Preservation" activities must involve Projects without prior rent restrictions, or Projects with existing affordability rent restrictions that are set to expire during the Investment Period or expire at other timeframes as determined by the CDFI Fund. For those Projects without existing affordability rent restrictions, the CMF investment will impose a new affordability rent restriction of at least 10 years, or other time period set forth in any applicable NOFA issued by the CDFI Fund. For those Projects with expiring affordability rent restrictions, the CMF investment must create at least an additional 10 years of affordability or other time period set forth in the applicable NOFA issued by the CDFI Fund. This ensures CMF Awards are used in Projects that are at an imminent risk of losing their affordability, and also implements new affordability requirements for those Projects without existing rent restrictions.

E. Underserved Rural Areas

One commenter suggested that the CDFI Fund change the criteria for what qualifies as an "Underserved Rural Area(s)" as it appears in the definition in the 2016 interim rule. The commenter suggested that one of the qualifying factors should be the total prior five years per capita dollars of all Federal assistance (not specific to the CMF Award) used to develop or rehabilitate affordable housing. The CDFI Fund appreciates the comment and notes that this recommendation is not administratively feasible. The CDFI Fund further notes that the revised interim rule includes a new definition, "Rural Area," which mirrors the definition in 12 CFR 1282.1 (Enterprise Duty to Serve Final Rule) and replaces the term "Underserved Rural Area."

F. Miscellaneous Comments

The CDFI Fund considered several comments despite the fact that they did not pertain to the specific changes being made in the 2016 revised interim rule. Six comments referred to the "High Housing Need" geographic designation which is no longer a part of the CMF program criteria. Eight comments were about the 2016 CMF Application or

Application process. The CDFI Fund notes that these Application-related requirements are set forth in §§ 1807.800 and 1807.801 of the revised interim rule. They remain unchanged except for the deletion of §§ 1807.801(b)(1) through (b)(4) which were deleted due to redundancy. Two other comments were about the reporting requirements for Economic Development Activities and Program Income. These requirements are more appropriate for the CMF Assistance Agreement and other CMF guidance and materials. Another commenter noted that the 2016 interim rule omits any mention of fair housing which is not correct. The CDFI Fund refers to fair housing in § 1807.503(b)(2)(i) of the revised interim rule, which remains unchanged.

III. Comments on the July 7, 2023, Notice and Request for Information

This revised interim rule addresses and incorporates written comments the CDFI Fund received in response to the Notice and Request for Information (RFI) that was published in the **Federal Register** on July 7, 2023. The CDFI Fund issued the RFI to enhance and improve the efforts of the CMF program to create and preserve affordable housing across the country, minimize administrative burden on program applicants and award recipients, and safeguard public funds. The CDFI Fund received over 40 pieces of correspondence in response to the RFI. Public comments that are within the scope of the revised interim rule are summarized and addressed in the following paragraphs.

Numerous commenters responded to the CDFI Fund's request for input about how to facilitate CMF program alignment with other Federal affordable housing programs. They recommended that aligning the CMF with other Federal programs, particularly the Low-Income Housing Tax Credit (LIHTC) program, would reduce administration burden and prevent duplication of compliance reporting requirements. Additional Federal housing programs that commenters mentioned for alignment included the HUD HOME Investment Partnership Program, HUD Section 8 Housing Choice Voucher Program, United States Department of Agriculture (USDA) Rural Development Section 515 Rural Rental Housing Program, and Section 502 Direct Loan Program. One commenter stated that aligning the CMF with other Federal housing programs allows for a cohesive structure within the affordable housing industry and promotes administrative efficiencies. The CDFI Fund appreciates the comments and the revised interim

rule introduces a new concept, Presumptively Compliant, as set forth in § 1807.106, and defined as “Presumptively Compliant” or “Presumptive Compliance” in § 1807.104. Under the Presumptively Compliant concept, certain CMF Affordable Housing projects that are also funded under other designated Federal housing programs and subject to certain rules and restrictions that are similar to those under the CMF program. Subject to verification by the CDFI Fund and as further set forth in the Assistance Agreement and guidance, these projects would be presumed to meet certain CMF rules and requirements, as long as those projects are deemed compliant under applicable designated Federal housing programs.

In response to RFI questions about aligning income definitions and recertifying tenant income, some commenters stated that the definition of “Very Low-Income” should be adjusted from the current definition of 50 percent of the Area Median Income (AMI) to 60 percent AMI to align with LIHTC. They suggested this would increase administrative efficiencies, reduce reporting requirements, and make the CMF more attractive as an additional funding source for LIHTC projects. Some commenters also recommended that the CDFI Fund revise CMF income certification requirements to align with LIHTC to avoid duplicating reporting requirements and reduce administrative burden. The CDFI Fund appreciates the comments and in response, changed the definition of “Very Low-Income” in the revised interim rule from 50 percent AMI and below, to 60 percent AMI and below. In addition, the CDFI Fund will no longer require the annual tenant income recertification for Projects where 100 percent of the units are subject to CMF affordability restrictions; the CDFI Fund will set forth additional parameters in the Assistance Agreement.

In response to a question in the RFI related to Project Commitment requirements, several commenters requested programmatic flexibility and expressed support for a new Commitment process. The CDFI Fund appreciates the comments and accordingly revises the interim rule to include a new Commitment process in § 1807.501. Under the revised interim rule, the CMF Award must first be Committed for Use to at least one of the Eligible Uses set forth in § 1807.301 within two years of receiving the CMF Award. In addition to the requirement that the CMF Award be Committed for Use within two years, in order to ensure that the CMF Awards are committed to

specific projects, a Recipient must make a Project Commitment within three years of receiving the CMF Award. This change will allow Recipients one additional year to source qualified projects during the Investment Period.

With respect to the use of Program Income (PI), some commenters recommended easing the current restrictions which required Recipients to only engage in activities designated in the Assistance Agreement. They recommended that the CDFI Fund allow Recipients to use PI for all CMF “eligible activities.” The CDFI Fund appreciates the comments and notes that Recipients' use of PI will continue to be detailed in the Assistance Agreement, which gives the CDFI Fund the appropriate flexibility to implement any updates to its policy on a more frequent basis and communicate them as such.

A number of commenters recommended changing or eliminating the limit on the purchase price of Homeownership Housing financed with the CMF Award. The current limit set forth in the 2016 interim rule is no more than 95 percent of the area median purchase price as determined by HUD under the HOME Investment Partnership Program (HOME Program). The CDFI Fund appreciates the comments and notes that the index used to set purchase price limits in §§ 1807.402(a)(1)(ii) and (b)(1) of the revised interim rule is revised to mirror the limits set forth in the HUD FHA Section 203(b) Mortgage Insurance Program. While some commenters suggested using other indices, such as four times the area median income or state housing finance agency limits, the CDFI Fund deems the FHA 203(b) limits to be a more reliable and effective index, and better reflective of current market conditions.

A few commenters recommended establishing a new minimum compliance period for Economic Development Activities financed using a CMF Award. The CDFI Fund appreciates these comments and § 1807.403 in the revised interim rule now includes a minimum compliance period of three years for Economic Development Activities. One commenter inquired about the leveraged costs and the associated calculation to meet the requirement. The CDFI Fund appreciates the comment and notes that the requested information appears in the Assistance Agreement.

IV. Summary of Changes

A. Overview

The revised interim rule strikes and replaces existing 12 CFR part 1807 in its entirety. Principal changes include, among other things, a clarification of CMF terms, concepts and requirements to improve Recipients' understanding of their obligations and requirements under the CMF program; a revision of CMF program requirements to better address activities and current business practices in the affordable housing industry; the addition of a new section, § 1807.403, detailing parameters related to Economic Development Activities; and a new eligibility requirement regarding Nonprofit Organizations wherein they are required to be designated as such under the laws of the organization's State or Indian Tribe of formation, be exempt from Federal income taxation pursuant to § 501(c)(3) of the Internal Revenue Code—with the exception of organization affiliated with Indian Tribes—and be able to demonstrate that a share of its total assets is dedicated to the development or management of affordable housing. The revised interim rule also deletes and adds new definitions in § 1807.104, replaces title heading and content in § 1807.106, and redesignates, adds or deletes subsections in §§ 1807.300, 1807.400, 1807.401, 1807.402, 1807.500, 1807.501, 1807.503, 1807.801 and 1807.902. Other changes that provide further clarification and elimination of redundancies are identified and discussed further below.

The following is a section-by-section overview of the amendments in this rulemaking.

B. Description of the Revised Interim Rule

The changes to the 2016 interim rule as provided in the revised interim rule, on a section-by-section basis, are as follows:

Subpart A—General Provisions

The change to § 1807.100 clarifies that CMF activities must take place in the United States, specifically, “every State of the United States, the District of Columbia, or territories of the United States.” The revision to § 1807.101(a) clarifies that CDFIs must be certified by the CDFI Fund. The term “merit-based” in § 1807.101(b) is deleted, leaving only “competitive,” as a technical correction. The CMF Application process has always been and remains a competitive one. The term “eligible uses” in § 1807.101(b) is replaced with the defined term “Eligible Uses” in § 1807.104 to align with the terminology

used in the Act, and is further described in § 1807.301. Section 1807.102 is revised by removing references to specific CDFI Fund programs to accommodate any future changes or additions to CDFI Fund programs; a corresponding change is made to delete the phrase “Notice of Funds Availability, Notice of Guarantee Availability, or Notice of Allocation Availability,” and replaced with the phrase “are set forth in the applicable funding notice.”

There are a number of changes to the definitions in § 1807.104. A new term “Affordability Period” is added to establish a period of at least 10 years or other longer time period set forth in the applicable NOFA issued by the CDFI Fund. This will give the CDFI Fund the flexibility to extend the affordability requirement, which was set at 10 years in the 2016 interim rule. The term “Affordable Housing Activities” is revised to deem Secondary Market Mortgage Purchase, a new term being introduced in the revised interim rule, as allowable under the definition. This change codifies a regulatory waiver articulated in the Fiscal Year 2023 NOFA related to Secondary Market Mortgage Purchases, to deem the use of a CMF Award for the direct purchase of Secondary Market Mortgages as allowable pursuant to the CMF program requirements. The term “Affordable Housing Fund” is revised by clarifying that it is an investment fund consisting of the CMF Award and any Leveraged Capital that a Recipient manages and uses to finance Affordable Housing Activities. Specifically, a Recipient may use an Affordable Housing Fund for leveraging purposes by making any combination of debt, grant, or equity investments, but excludes the purchase of stock, securities, or the buy-out of partnership interest. A new term “Application” is added to refer to the CDFI Fund's CMF application, including any written and verbal information in connection therewith, and any exhibits, attachments, appendices and/or written or verbal supplements thereto. A new term “CMF Unit” is added to facilitate the understanding and applicability of program performance goals and compliance requirements. The definition implements threshold requirements that units financed with a CMF Award, at a minimum, have separate kitchen and bath facilities, except for single room occupancies, assisted living facilities, and group homes. The term “Committed” is changed to “Committed for Use,” but the definition remains the same. This

change accommodates a new Commitment process for the CMF Awards, which better reflects the Act and affords Recipients more time to meet the Project Commitment requirements. The term “Community Service Facility” is revised to clarify that the associated costs and expenses for services rendered at such facilities must directly benefit nearby residents of affordable housing. Some examples of such service programs include health care, childcare, educational programs, job training, food and nutrition services, art and social services, as further specified in the Assistance Agreement. The term “Direct Administrative Expenses” is revised by clarifying that they must be related to “the financing and/or in support of Projects.” The term “Economic Development Activity” is revised by deleting the term “neighborhood based” in order to allow expanded revitalization efforts that include and transcend neighborhood-based businesses; deleting “which, In Conjunction with Affordable Housing Activities, implements,” because the term “In Conjunction with Affordable Housing” is no longer a defined term in the revised interim rule; and clarifying that a CMF Award must be used to stabilize, sustain, or revitalize communities and neighborhoods physically proximate to any affordable housing to benefit a Low-Income Area or Underserved Rural Area. A new term, “Economic Development Activity Fund” is added to describe an investment fund consisting of the CMF Award and any Leveraged Capital that a Recipient manages and uses to finance Economic Development Activities. Specifically, a Recipient may use Economic Development Activity Fund for leveraging purposes by making any combination of debt, grant, or equity investment, but excludes the purchase of stock, securities, or the buy-out of partnership interests. The term “Eligible-Income” is revised by clarifying that for owner-occupied or rental Housing units, the qualifying annual income is at 120 percent or below of the AMI, adjusted for Family size, as determined by HUD. The term “Eligible Project Costs” is revised by deleting “Leveraged Costs” and deeming all development, financing, refinancing, acquisition, relocation, loan loss reserve, guarantee, predevelopment, and related soft costs incurred in achieving Project Completion as eligible, as described in the Assistance Agreement. These costs can be paid using a CMF Award and any Leveraged Capital. A new term “Eligible Uses” is defined and added. This term replaces

“Eligible Activities” in § 1807.301 of the 2016 interim rule and as applicable, in relevant parts of the revised interim rule, to align with the terminology used in the Act. The term “Extremely Low-Income” is revised to clarify that for owner-occupied or rental Housing units, the qualifying annual income is at 30 percent or below of the AMI, adjusted for Family size, as determined by HUD. The term “Family” is revised to include both single individuals and a group of individuals living in the same dwelling unit, who may be related by birth, marriage or adoption, or otherwise unrelated to each other in a household. A new term “Feasibility Determination Expenses” is added to create a mechanism by which a Recipient can allocate a portion of the CMF Award to support expenses disbursed to determine the feasibility of potential Affordable Housing Activities and/or Economic Development Activities. The Recipient must incur these expenses before Project Commitment. Such expenses may include preliminary market studies, engineering, architectural analyses, and financial feasibility analyses, which are explicitly excluded from Eligible Project Costs. A new term “Homebuyer” is added to describe a Family that may receive CMF assistance for Homeownership. This addition to the definitions is to ensure that Recipients do not use the CMF Awards to assist Families in buying second homes or multiple homes. The term “Homeownership” is revised to better align with the CMF program requirements by deleting the CDFI Fund’s need to approve equivalent forms of ownership, because such approval is no longer a program requirement, and replacing it with a list of additional acceptable types of ownership, including cooperative, mutual housing, or ground lease title interest, as allowed under applicable State law; and deleting subsections (1)(i) through (iii) as they appear in the 2016 interim rule related to specific ground lease terms for Indian trust or restricted Indian lands, Housing located in Guam, the Northern Mariana Islands, the U.S. Virgin Island, and American Samoa, and manufactured housing. The 2016 interim rule specified terms for ground leases based on the location or type of housing. The CDFI Fund has decided that such specifications were overly prescriptive and not necessary for general program administration; instead, the revised interim rule requires compliance with applicable State law; redesignating (2) and (3) as (1) and (2), respectively, with no change to the content in (1); replacing “restrictions on

resale” in redesignated (2) with “restrictions on affordability,” and deleting “may only be” and replacing it with “is” to take into account a possible application of affordability restrictions imposed by local homeownership programs. A new term “Homeownership Program” is added to codify the general waiver granted to select Recipients in the Fiscal Year 2018 NOFA, that allowed them to meet the CMF Commitment requirement for Homeownership, as long as the Recipients’ Board of Directors established a homeownership program and committed the CMF Award to the program at the time of the Project Commitment. This newly defined term requires Recipients to establish a program to finance Purchase by meeting the requirements of § 1807.501, in a form and substance acceptable to the CDFI Fund. The definition of “Housing” is streamlined to refer to Single-family and Multi-family residential units, such as manufactured housing, permanent supportive housing, single-room occupancy housing, assisted living and group homes that are permanent in nature and not temporary. The term, as revised, consolidates a list of supportive housing types—identified by specific population groups—under the single term “permanent supportive housing” in order to ensure that all eligible population groups are included in the definition; excludes manufactured housing lots as a type of housing, because CMF is not intended to finance dedicated lots or lands without associated Housing; adds assisted living as another eligible type of Housing; removes the reference to elder cottage housing opportunity (ECHO) because it is no longer eligible to be financed with the CMF Award; and clarifies that Housing financed with the CMF Award must be permanent in nature, which is consistent with similar clarifications made throughout the revised interim rule. The term “In Conjunction With Affordable Housing” is no longer a stand-alone definition, but instead embedded in the definition of “Economic Development Activities” at § 1807.403 in the revised interim rule. A new term “Indian Tribe” is added to define any Indian Tribe, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); each such Indian Tribe must be recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians. The term

“Leveraged Costs” is replaced with “Leveraged Capital,” and the definition is revised to reflect a type of capital used to finance and support Affordable Housing Activities and Economic Development Activities that exceed the dollar amount of the CMF Award, as further provided in § 1807.500. The term “Low-Income” is revised to clarify that for owner-occupied or rental Housing units, the qualifying annual income is at 80 percent or below of the AMI, adjusted for Family size, as determined by HUD. The term “Low-Income Area (or LIA)” is revised by deleting a provision referring to block numbering, because it is not part of the geographic verification system. The term “Metropolitan Area” is revised by adding at the end “and as made available by the CDFI Fund for a specific Application funding round” in order to make this definition consistent with the definition of “Non-Metropolitan Area,” as it currently appears in the CMF program guidance. The term “Multi-family” is revised to delete “townhouse” from the definition, because a townhouse is a type of building that can be a Single-family housing, Multi-family housing, or mixed-use building. The term “Nonprofit Organization” is revised to include those organizations that are designated as a nonprofit or non-for-profit entity under the laws of the organization’s State or Indian Tribe of formation; exempt from Federal income taxation pursuant to § 501(c)(3) of the Internal Revenue Code of 1986, with the exception of organizations affiliated with Indian Tribes; and able to demonstrate that a share of its total assets are dedicated to the development or management of affordable housing, as provided for in the NOFA. This change promotes consistency regarding the identification of entities within the scope of the definition and consistency with the statutory terminology, and provides additional clarity regarding the inclusion of Indian Tribes. Under the revised definition, a Nonprofit Organization may be an entity controlled by an instrumentality or subdivision of a state or local government. For transition purposes, the CDFI Fund is delaying the implementation of the new definition of “Nonprofit Organization” until the first NOFA published on or after January 1, 2026. The term “Participating Jurisdiction” is no longer a defined term because it refers to a jurisdictional area that receives funding under the HOME program. Given that the revised interim rule incorporates the price limits set forth in HUD FHA Section 203(b)

Mortgage Insurance Program and discontinues the use of the limits used in the HOME program, the term “Participating Jurisdiction” is no longer applicable to the CMF. A new term “Permanent Housing” is added to distinguish it from temporary or transitory housing to reinforce that a CMF Award must be used to support Housing that is owned or rented under a written lease with an initial lease term of six months or longer. The term “Preservation” is revised by deleting all content in (1) through (5) as they appear in the 2016 interim rule and replacing it with new content. The definition as revised clarifies that in the case of owner-occupied Single-family housing or Multi-family rental housing with existing rent restrictions, any Preservation effort must extend the existing affordability restrictions that are set to expire within the Investment Period or set to expire at another time as defined by the CDFI Fund. The extension will be subject to the Affordability Period or as set forth in the Assistance Agreement. If the Housing does not have an existing affordability restriction, a new Affordability Period must be imposed subject to the aforementioned requirements. This minimizes the risk of an imminent loss of existing affordability restrictions for projects subject to preservation efforts using a CMF Award. It also proactively addresses the possible loss of affordable housing subject to affordability expiration pursuant to another Federal housing program. A new term “Presumptively Compliant” or “Presumptive Compliance” is added to describe a mechanism by which the CDFI Fund deems certain rules, requirements and designations under other comparable Federal housing programs to meet certain the CMF requirements. This change is being implemented to better align CMF with other Federal funding programs, to ease Recipients’ administrative burden and reporting requirements, and to reflect strong support received from stakeholders in response to the RFI. The term “Program Income” is revised by adding “and as further specified in the Recipient’s Assistance Agreement” to the existing definition, in order to allow the CDFI Fund to use another appropriate source to further clarify rules regarding Program Income; and replacing “2 CFR part 1000” with “2 CFR part 200” to incorporate a more accurate regulatory citation. The term “Project” is revised to facilitate Recipients’ understanding of the term used in the CMF program and to clarify that it refers to a specific Affordable

Housing Activity, Economic Development Activity, or Homeownership Program the Recipient uses its CMF Award to finance or support, resulting in Project Completion. A new term “Project Commitment” is added to require the Recipient to provide, in written form and substance acceptable to the CDFI Fund, a commitment to a Project as set forth in § 1807.501. The addition of this term complements the new Commitment process in § 1807.501 and expands on the concept of “Committed” in the 2016 interim rule. It also extends the time for Project Commitment. The term “Purchase” is revised to describe the use of the CMF Award to provide financing to a Family for Homeownership that meets the qualifications set forth in subparts D and E of this part; or, in the case of using the CMF financing for an acquisition of rental Housing, to a developer or a project sponsor who also meets the qualifications set forth in subparts D and E of this part. This is to ensure that the CMF Awards are used for the Purchase of Affordable Housing to serve Families meeting these qualifications, or assist developers or project sponsors who, in turn, ultimately serve such Families. The term “Revolving Loan Fund” is revised to describe an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient manages and uses to finance and/or support Affordable Housing Activities and/or Economic Development Activities. The repayments on such loans are used to finance additional loans. The term “Risk-Sharing Loan” is revised to describe loans consisting of the CMF Award and any Leveraged Capital made for Affordable Housing Activities and/or Economic Development Activities whereby the risk of borrower default is shared by the Recipient with other lenders. A new term “Rural Area” is added to refer to a census tract that meets the definition of Rural Area, as defined in 12 CFR 1282.1. A new term “Secondary Market Mortgage” is added to create qualifications for the purchase of third-party originated mortgages using a CMF Award. This formalizes the policy guidance provided in the Fiscal Year 2023 NOFA that the Recipients’ purchase of CMF eligible loans from a third-party originator within 12 months of origination are an allowable activity under the CMF program. Specifically, the definition restricts the use of the CMF Award for the purchase of Secondary Market Mortgages to those mortgage(s) originated by third party

lenders and purchased by Recipients within 12 months or less from the date of their origination as evidenced by an agreement; for which the source of origination is not the CMF Award; and that would not have been originated but for the Recipient’s purchase. A new term “Secondary Market Mortgage Purchase” is added to describe a Recipient’s purchase of a Secondary Market Mortgage to complement the definition of “Secondary Market Mortgage.” The term “Service Area” is revised by adding a national Service Area or other areas further defined by the CDFI Fund in the applicable NOFA, in order to expand the scope of the coverage. This allows Recipients to better serve certain geographic locations such as Rural Areas. The term “Single-family housing” is revised to include mutual housing, a manufactured housing unit only, or a combination of a manufactured housing unit and its lot. This ensures that the CMF funded financing requires an affordable housing unit and prohibits the financing of a manufactured housing lot only. The term “State” is revised to streamline the definition and accommodate any United States government changes to its territories by deleting the current list of United States territories “the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the U.S. Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands” from the definition. All United States territories, Districts and Commonwealths remain as eligible geographies. The term “Subsidiary” is revised to refer to an entity that is majority-owned by its parent company. This clarification is to make a clear distinction between the definitions of Affiliates and Subsidiaries. The term “Underserved Rural Area” is revised because it needs to be consistent with the definition of “Rural Area,” which is a new term in the revised interim rule. The term “Uniform Administrative Requirements” is revised by replacing “2 CFR part 1000” with “2 CFR part 200” to incorporate a more accurate regulatory citation. The term “Very Low-Income” is revised by clarifying that for owner-occupied or rental Housing units, the qualifying annual income is at 60 percent or below of the AMI, adjusted for Family size, as determined by HUD.

Section 1807.105 is revised by replacing the term “would” with “would not” to clarify that for individual waivers, the CDFI Fund will determine that the application of the requirement to be waived does not adversely affect achieving the purpose

of the Act. Section 1807.106 is redesignated as “Presumptive Compliance with Other Federal Programs,” and the entire content removed and replaced with new CMF requirements related to Presumptive Compliance. Section 1807.107 is revised by deleting the reference to the prior publication of the interim rule “February 8, 2016,” clarifying the applicability of the interim rule to all future uses of prior CMF Awards and all future CMF Awards granted under any NOFA published after the publication date of this revised interim rule, and specifying when the new definition of “Nonprofit Organization” will take effect to facilitate the transition to the new definition.

Subpart B—Eligibility

Section 1807.200(a)(2)(iii) is revised by replacing “[c]an demonstrate that” with “[d]emonstrates” as an editorial change, and by adding relevant CMF program documents at the end of the sentence for clarification. Section 1807.200(b) is revised by clarifying that for an Applicant seeking eligibility under § 1807.200(a)(1), the CDFI will verify that the Applicant is a Certified CDFI pursuant to the guidance provided in the applicable NOFA.

Subpart C—Eligible Purposes; Eligible Uses; Restrictions

Section 1807.300(b) includes an updated definition for “Economic Development Activities,” as further described in § 1807.403, that they must be located in a Low-Income Area or Underserved Rural Area; undertaken in conjunction with any affordable housing that is authorized as such under applicable local, State or Federal housing program laws; and reasonably available, physically proximate to, and benefit residents of such affordable housing. Sections 1807.300(b)(1) through (3) in the 2016 interim rule are deleted and some of the concepts contained therein are reorganized in § 1807.403 as new content.

Section 1807.301 is redesignated as “Eligible Uses,” and § 1807.301(d) is revised to incorporate the newly defined term “Economic Development Activity Fund.”

Section 1807.302(a)(12) is revised by replacing “student dormitories” with “dormitories” to clarify that CMF Awards cannot be used to fund any types of dormitories, not just student dormitories. Section 1807.302(b)(1) is revised by adding to the list of businesses deemed ineligible to receive financing and/or support with a CMF Award those businesses or activities provided in 13 CFR 120.110(c) through

(p), and other businesses deemed inconsistent with the general purpose of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 *et seq.*; Pub. L. 103–325). Section 1807.302(c) is revised to state that the restriction on the use of Economic Development Activities to no more than 30 percent of their CMF Awards must be approved in the applicable Assistance Agreement. Section 1807.302(d) is revised to clarify that any Affordable Housing financed and/or supported by Loan Guarantee or Loan Loss Reserves shall be tracked during the Affordability Period for compliance with the affordability requirements, as provided in subpart D of this part. Section 1807.302(e) is revised by clarifying that repayment of loans made pursuant to Loan Guarantees or Loan Loss Reserves during the Investment Period must be used as Program Income, subject to the requirements in the Recipient’s Assistance Agreement. Section 1807.302(f) is revised to allow Recipients to use the CMF Award for Direct Administrative Expenses or Feasibility Determination Expenses at amounts set forth in the applicable NOFA and corresponding Assistance Agreement. This change provides additional flexibility on the use of the CMF Award when Recipients are assessing a project’s feasibility as part of their preliminary analysis prior to Project Commitment. The expanded guidance further provides that neither Feasibility Determination Expenses nor Direct Administrative Expenses may be deemed as Eligible Project Costs.

Section 1807.303(a) is revised by deleting “for the approved, eligible CMF Award uses” and replacing it with “in the manner as further set forth in the Assistance Agreement,” because terms on the use of Program Income will be provided in the Assistance Agreement. Section 1807.303(b) is revised by replacing “2 CFR part 1000” with “2 CFR part 200” to incorporate a more accurate regulatory citation.

Subpart D—Qualifications as Affordable Housing

Section 1807.400 is restructured with the newly designated subsections 1807.400(a), (b) and (c) and revised with new requirements by maintaining the current guidance on the use of a CMF Award for Affordable Housing Activities, including compliance with affordability qualifications set forth in the applicable NOFA and/or Assistance Agreement; setting forth new requirements based on the new definition of Permanent Housing in the revised interim rule; and establishing

that none of the residents of Affordable Housing can be full-time students, unless they are married filing a joint tax return, receive assistance under Title IV of the Social Security Act, enrolled in a job training program, are with dependent children as single parents, as defined in IRC sec. 152, previously enrolled in a foster care program, or meet other criteria specified by the CDFI Fund.

The introductory paragraph to § 1807.401 is revised by clarifying that rental Multi-family housing Projects financed and/or supported with a CMF Award must have at least 20 percent of the units rent-restricted to any combination of Low-Income, Very Low-Income, or Extremely Low-Income Families with specific income levels and meet the rent limits provided for in the applicable NOFA and Assistance Agreement in any CMF funding round. Section 1807.401(a) is revised by deleting all of the content that describes the calculation of CMF rental units according to a tenant’s income category and replacing it with “[t]he gross rent limits for Affordable Housing are further specified in the Assistance Agreement.” There are no changes to the content in § 1807.401(b). Section 1807.401(c) is revised to clarify that the gross rent restrictions are set forth in the Assistance Agreement and under IRC sec. 42(g)(2), as applicable. Section 1807.401(d) is revised to clarify that Housing under this section must meet the affordability requirement during the Affordability Period. Moreover, the affordability restrictions are allowed to terminate upon foreclosure of the Housing or transfer in lieu of foreclosure. The affordability requirements must be imposed by deed restrictions, covenants running with the land, or other recording instruments. A Recipient may use other types of recording instruments, as further set forth in the Assistance Agreement, if written approval is obtained from the CDFI Fund. To the extent allowed under State law, proceeds used to pay off mortgages financed with a CMF Award in the event of a sale of a property at a foreclosure sale, transfer in lieu of foreclosure, short sale, or other types of disposition, will be treated as Program Income to allow Recipients to engage in additional Affordable Housing Activities and/or Eligible Uses, except to capitalize an Economic Development Activity Fund, in § 1807.301. Section 1807.401(e) is re-titled as “Standard Lease Terms and Conditions,” and the entire content removed and replaced to prescribe that a written lease or rental agreement, which must be in

compliance with applicable State or local law, is required for all tenants occupying rental CMF Units. Section 1807.401(f)(1) is revised to clarify that at the time of each initial lease and occupancy, the tenant income will be determined to ascertain income eligibility. During the Affordability Period, the existing tenant's income will be re-examined annually based on requirements set forth in the Assistance Agreement. In addition, "household" is replaced with "Family" to incorporate the new term and "assisted" with "supported" for clarity as an editorial change. Section 1807.401(f)(3) is deleted, as it is no longer applicable based on the current HOME regulation in effect. Section 1807.401(f)(4) in the 2016 interim rule is redesignated as § 1807.401(f)(3) and is revised by replacing the term "Low-Income Family" with "Family" to expand the scope of applicable Families for the CMF. Section 1807.401(g)(1) is revised to incorporate the new term "CMF Unit." Section 1807.401(g)(2) is revised by deleting references to IRC sec. 42(g) and 42(h) to the extent that the CDFI Fund has not and is not fully adopting the requirements set forth therein in the revised interim rule, as the rent limitation determination and calculation will be provided for in the Assistance Agreement. Moreover, this section incorporates editorial changes to clarify that the maximum rent for tenants whose incomes no longer qualify is either 30 percent of the Family's annual income, or the amount payable by the tenants under State or local law, whichever is less. Section 1807.401(g)(3) is revised to incorporate the new term "CMF Unit" in lieu of "CMF financed or assisted unit" and clarifies that if the income of a tenant of a CMF Unit no longer qualifies, the Recipient may designate another unit as a rent-restricted replacement unit, as long as it meets the affordability qualification for the same income category as the original unit within the same Project. A new term "Homebuyer" is being incorporated throughout § 1807.402 to prohibit Recipients from using the CMF Awards to assist Families in buying second homes or multiple homes. Section 1807.402 is restructured as follows: § 1807.402(a) in the 2016 interim rule is redesignated as § 1807.402(a)(1); § 1807.402(a)(1) is redesignated as § 1807.402(a)(1)(i) with a new subheading "Single-family housing"; § 1807.402(a)(2) is redesignated as § 1807.402(a)(1)(ii) with a new subheading "Purchase price limits"; § 1807.402(a)(3) is redesignated as § 1807.402(a)(1)(iii) with a new

subheading "Qualifying Homebuyer"; a new § 1807.402(a)(1)(iv) is added with new content under subheading "Eligible-Income requirements"; § 1807.402(a)(4) is redesignated as § 1807.402(a)(1)(v); and § 1807.402(a)(5) is redesignated as § 1807.402(a)(1)(vi)(A) and (B). The redesignated § 1807.402(a)(1) is revised by clarifying that a Recipient that uses the CMF Award to finance or support the Purchase of Housing by a qualified Homebuyer must ensure that the Housing and Homebuyer meet the affordability requirements in subpart D of this part. The redesignated § 1807.402(a)(1)(ii) is revised by replacing the Single-family housing purchase price limits of "95 percent of the median purchase price for the area as used in the HOME Program" with the purchase price limits for the area under the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index as designated by the CDFI Fund. This revision is necessary because the index used in the 2016 interim rule has lagged market conditions, resulting in limited availability of housing choices for Families, particularly large Families, and may have had the unintended effect of concentrating affordable housing to certain geographic areas and communities, possibly in conflict with the CMF objectives. This section further requires that the underlying mortgage be originated based on an assessment of whether the borrower can repay the loan based on terms and conditions that are transparent and understandable, and the affordability of the mortgage to the Homebuyer over the life of the loan. The redesignated § 1807.402(a)(1)(iii) is revised by replacing "Family" with "Homebuyer" to incorporate the new term for accuracy; a similar requirement that "the Single-family housing must be the principal residence of the Family throughout the period described in paragraph (a)(4) of this section" is now included in § 1807.402(a)(1)(v). The new § 1807.402(a)(1)(iv) establishes that a qualifying Homebuyer under this section must have a household income at Eligible-Income; to determine whether a Family would be income-eligible under this section, adjusted gross income as defined under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax reporting is used, or other methodology for determining income eligibility as provided in the Assistance Agreement; and a homeowners of one- to four-unit Single-family housing may rent the additional unit(s) as Permanent Housing if at least one unit is maintained as the principal residence of

the Homebuyer. This last requirement is being added to encourage an increase in the overall number of rental units to help boost the supply of rental housing and address an unprecedented housing crisis nationwide. The redesignated § 1807.402(a)(1)(v) is revised by adding the requirement that the Single-family housing must be the principal residence of the Homebuyer at the time of Purchase and is subject to the affordability requirements during the Affordability Period as provided in redesignated § 1807.402(a)(1)(vi) to ensure the CMF Award is being used to serve the intended income qualified Homebuyer. It further explains that the Affordability Period does not apply to additional units of the Single-family housing being rented as Permanent Housing. The redesignated § 1807.402(a)(1)(vi) is revised to state that the Recipient must establish and impose recoupment, replacement and resale strategies requiring that under new § 1807.402(a)(1)(vi)(A), if the Housing is sold in five years or less from the date of Purchase, the Housing must be sold in a manner that meets the qualifications set forth in § 1807.402, or the CMF Award will be recouped and the Housing replaced with a replacement unit to satisfy the affordability requirement for the remainder of the Affordability Period. Under new § 1807.402(a)(1)(vi)(B), if the Housing is sold any time after five years from the date of Purchase but before the end of the Affordability Period, the Housing must be sold to a new Eligible-Income Family or, if the Housing is not sold to an Eligible-Income Family, a proportionate share of the CMF investment must be recouped as Program Income. In case the Housing is not sold to an Eligible-Income Family after five years from the date of Purchase and the Recipient recoups a proportional amount of the CMF Awards as Program Income, the Recipient is not required to replace the sold Housing with another replacement unit. Additionally, a Recipient's recoupment, replacement, and resale strategy must meet the requirements of newly designated § 1807.402(a)(1)(vi) for compliance with program requirements and the terms under the Assistance Agreement. The affordability requirements are allowed to terminate at the time of foreclosure, transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD. The occurrence of these events will result in the Housing no longer being subject to an affordability requirement or a recoupment, replacement, or resale strategy previously imposed by the

Recipient. The affordability restrictions shall be revised according to the original terms, however, if during the original Affordability Period, the owner of record before the termination event obtains an ownership interest in the Housing. Section 1807.402(b)(1) is revised by replacing the Single-family housing purchase price limits as used in the HOME Program with those used in the HUD FHA Section 203(b) Mortgage Insurance Program, identical to the change made to § 1807.402(a)(1)(ii). Section 1807.402(b)(2) is revised to reinforce that the Single-family housing must remain the principal residence of the Family throughout the Affordability Period, as described in § 1807.402(b)(3). Section 1807.402(b)(3) is revised by replacing “at least 10 years” with “Affordability Period” to incorporate the new term, and “after Rehabilitation is completed” with “upon Project Completion or meet recoupment, replacement, and/or resale” to accurately describe the program requirement in § 1807.402(a)(1)(vi) as referenced herein. A new § 1807.402(b)(4) is added to describe the allowable uses of permanent additional units as described in the definition of “Housing” for a Homebuyer owning Single-family housing subject to the requirements under this part. Section 1807.402(c) is revised to reinforce that any owner of Single-family housing under this section must meet the definition of “Homebuyer.” Section 1807.402(e) is revised to clarify that when converting rental CMF Units to Homeownership units by selling, donating, or otherwise conveying the units to existing tenants, the tenants can only become Homebuyers under an existing documented rent-to-own program pursuant to the requirements under this section. The Homeownership units are also subject to a minimum period of affordability equal to the remaining rental Affordability Period, as further specified in the Assistance Agreement.

A newly added § 1807.403 comprises CMF program requirements regarding Economic Development Activities and is now consolidated under a single section. The 2016 interim rule requirement, located in § 1807.302(c), that no more than 30 percent of a CMF Award for each individual CMF Award round, may be used for Economic Development Activities, is repeated in the introductory paragraph of § 1807.403. The introductory paragraph to § 1807.403 also provides that a CMF Award used for Economic Development Activities must stabilize, sustain, or revitalize communities and

neighborhoods physically proximate to any affordable housing to meet the requirements outlined in this section.

Section 1807.403(a) describes the Eligible Uses of a CMF Award to finance and support Economic Development Activities pursuant to § 1807.301, with the exception of Affordable Housing Fund. This revision extends all Eligible Uses for Economic Development Activities, which was not previously articulated in the 2016 interim rule. Section 1807.403(b) provides a new requirement that Recipients who use their CMF Awards for allowable Economic Development Activities resulting in real estate and/or physical structures must ensure such are used for a minimum of three years commencing with Project Completion. This requirement establishes a new compliance requirement, which is absent in the 2016 interim rule, that physical structures resulting from Economic Development Activities retain the intended or similar purpose for at least three years from Project Completion. Section 1807.403(c) restates the definitional requirement that the Economic Development Activities must be undertaken as part of a Concerted Strategy which, for example, will result in increased education, employment, transportation, financial services or other opportunities in a Low-Income Area or Underserved Rural Area. Section 1807.403(d) incorporates the requirements related to the term “In Conjunction with Affordable Housing” which appears in the 2016 interim rule. This section establishes that Economic Development Activities must be located in a Low-Income Area or Underserved Rural Area; undertaken in conjunction with any affordable housing that is subject to or authorized by local, State or Federal laws; and reasonably available, physically proximate, and benefit residents of such affordable housing. This section also establishes criteria for physical proximity for Metropolitan and Non-Metropolitan Areas, which are existing provisions in the 2016 interim rule being reorganized under this section for ease of reference.

Subpart E—Leveraged Capital; Eligible Project Costs; Commitment Requirements

Section 1807.500(a) is revised under a new subheading “Eligible Project Costs” to clarify that the leverage requirement to generate Eligible Project Costs in an amount at least 10 times the CMF Award excludes any Direct Administrative Expenses and Feasibility Determination Costs, combined, from the calculation. This is to allow

Recipients additional flexibility in the use of the CMF Award in determining whether to proceed with prospective projects prior to Project Commitment. In § 1807.500(b)(1), “percentage” is replaced with “multiplier” to reflect the update to the term “Leveraged Capital,” and “private” is added before “non-government sources” for clarity. Sections 1807.500(b)(2)(ii) through (iii) are revised to reinforce that Leveraged Capital used to finance and/or support Affordable Housing Activities or Economic Development Activities must comply with §§ 1807.400, 1807.401 and 1807.402 or § 1807.403 in subpart D, respectively, and as further provided in the Assistance Agreement. Section 1807.500(c) is deleted in its entirety; any related requirements will be described in the Assistance Agreement.

Section 1807.501, re-titled as “Commitments,” establishes a new Commitment process to better align with the requirements under the Act. This section also adds new content at §§ 1807.501(c)(4) through (6) to expand the requirements to determine Project Commitment. To afford Recipients additional time and flexibility in identifying projects to further CMF objectives, § 1807.501(a) is revised to establish that pursuant to § 1807.301, the use of a CMF Award must be Committed for Use by Recipients to one or more Eligible Uses within two years of the date designated in the Recipient’s Assistance Agreement. The content in §§ 1807.501(b)(1) through (3) is deleted in its entirety and the new content in § 1807.501(b) provides that the Recipient must achieve Project Commitment within three years of the date designated in the Recipient’s Assistance Agreement, resulting in a longer timeframe to identify viable projects. The content in § 1807.501(c) is deleted in its entirety and new content in the newly designated §§ 1807.501(c)(1) through (3) describes the Commitment requirements for real estate projects, and replaces “commitment” with “Project Commitment,” a newly defined term in the revised interim rule. The newly designated §§ 1807.501(c)(4) through (6) set forth the following new, expanded Commitment requirements: For Secondary Market Mortgage Purchase, the Recipient must evidence an agreement with a third party lender to purchase the qualified mortgages and demonstrate that such mortgages would not have been otherwise originated by the third party lender; for a qualified Homeownership Program, the Recipient must evidence that a commitment has been made by the action of the

Recipient's Board or Directors; and for a Project comprised of a Loan Guarantee or Loan Loss Reserves, the Recipient must enter into a guarantee agreement or have established a cash reserve, escrow, or accounting-based accrual reserve with a lender or investor. These revisions are a recognition of the breadth of CMF activities and differing criteria in meeting Project Commitment. Section 1807.501(c) is deleted in its entirety due to redundancy, as similar content appears in § 1807.901 and in the NOFA. Section 1807.501(d) is deleted in its entirety, as this content is set forth in the NOFA and/or Assistance Agreement.

Section 1807.503(a) is revised by adding "for Affordable Housing Activities and Economic Development Activities" after "Project Completion" to fully capture the Project Completion requirements for all types of CMF activities. Section 1807.503(a)(4) is revised by clarifying that for Preservation, Project Completion occurs when the refinancing of the loan is closed and the underlying real estate is compliant with all CMF requirements, subject to any additional program requirements for Rehabilitation as applicable. Section 1807.503(a) adds new content at §§ 1807.503(a)(5) through (7) in the revised interim rule to expand the Project Completion requirements to include Secondary Market Mortgage Purchase, Loan Loss Reserve and Loan Guarantee activities. Section 1807.503(b) is revised by deleting "which must be met for a period of at least 10 years after the Project Completion date" with respect to property standards based on the new definition of "Affordability Period," which could be extended to more than 10 years. Section 1807.503(b)(1) is revised by adding a subheading "Code requirements." Section 1807.501(b)(2) is revised by adding a subheading "Other requirements." Section 1807.503(b)(2)(i) is revised by adding "Title VIII of the Civil Rights Act of 1968" before "Fair Housing Act" for clarity and making editorial changes to clarify that "Multi-family housing" as used in this section is equivalent to "covered multifamily dwellings," as defined in 24 CFR 100.201.

Section 1807.503(b)(3)(i) is revised by replacing "10-year period of affordability" with "Affordability Period" to incorporate the new term.

Subpart F—Tracking Funds; Uniform Administrative Requirements; Nature of Funds

Section 1807.602 is revised by deleting "CMF Award proceeds retain their Federal character until the end of

the Investment Period" as this or similar requirement will be set forth in the Assistance Agreement and/or other CDFI Fund guidance.

Subpart H—Evaluation and Section of Applications

Section 1807.800(a) is revised by deleting "on a merit based and" and adding "based on the criteria outlined in the NOFA" as an editorial change for clarity.

Section 1807.801(b) is revised by deleting §§ 1807.801(b)(1) through (b)(4) in their entirety for redundancy, as they are included in other CDFI Fund guidance materials. Section 1807.801(c) is revised by designating this subsection as "Other Factors" with no change to content.

Subpart I—Terms and Conditions of CMF Award

Section 1807.900(a)(2) is revised by replacing "uses" with "Eligible Uses" for clarity. Section 1807.900(c) is revised to clarify that the CDFI Fund will provide a Recipient with reasonable notice and opportunity to cure any instances of noncompliance prior to determining whether the Recipient has failed to comply substantially with the Act, these regulations or an Assistance Agreement.

Section 1807.902(b) is redesignated as "Beneficiary Demographic Data" for clarity and revised by deleting "must" and replacing it with "may be required to" to reflect a change in the program requirements.

Section 1807.902(d) is revised by adding "and the applicable NOFA" at the end for clarity.

Section 1807.902(e)(iii) is revised by updating financial reporting criteria for regulated financial institutions (*i.e.*, Insured Depository Institutions, Depository Institution Holding Companies, and Insured Credit Unions) to align with the CDFI Fund compliance requirements with respect to completing a Financial Statement Audit report.

Section 1807.902(f) is deleted in its entirety as the requirement is included in the applicable NOFA and/or the Assistance Agreement.

V. Rulemaking Analysis

A. Executive Order (E.O.) 12866

It has been determined that this interim rule is not a significant regulatory action under Executive Order 12866, as amended. Accordingly, a regulatory impact assessment is not required.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required under the

Administrative Procedure Act (5 U.S.C. 553), or any other law, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The collections of information contained in this interim rule will be reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned the applicable, approved OMB Control Numbers associated with the CDFI Fund under 1559–XXXX. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

D. National Environmental Policy Act

This interim rule has been reviewed in accordance with the CDFI Fund's environmental quality regulations (12 CFR part 1815), promulgated pursuant to the National Environmental Protection Act of 1969 (NEPA), which requires that the CDFI Fund adequately consider the cumulative impact proposed activities have upon the human environment. It is the determination of the CDFI Fund that the interim rule does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the NEPA and the CDFI Fund's environmental quality regulations (12 CFR part 1815), neither an Environmental Assessment nor an Environmental Impact Statement is required.

E. Administrative Procedure Act

Because the revisions to this revised interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act, 5 U.S.C. 553(a)(2).

F. Comment

Public comment is solicited on all aspects of this revised interim rule. The CDFI Fund will consider all comments made on the substance of this revised interim rule, but it does not intend to hold hearings.

G. Catalogue of Federal Domestic Assistance Number

Capital Magnet Fund—21.011.

List of Subjects in 12 CFR Part 1807

Community development, Grant programs—housing and community development, Reporting and record keeping requirements.

■ For the reasons set forth in the preamble, 12 CFR part 1807 is revised to read as follows:

PART 1807—CAPITAL MAGNET FUND

Subpart A—General Provisions

- Sec.
- 1807.100 Purpose.
 - 1807.101 Summary.
 - 1807.102 Relationship to other CDFI Fund programs.
 - 1807.103 Recipient not instrumentality.
 - 1807.104 Definitions.
 - 1807.105 Waiver authority.
 - 1807.106 Presumptive Compliance with Other Federal Programs.
 - 1807.107 Applicability of regulations for CMF Awards.

Subpart B—Eligibility

- 1807.200 Applicant eligibility.
- 1807.201 through 1807.299 [Reserved]

Subpart C—Eligible Purposes; Eligible Uses; Restrictions

- 1807.300 Eligible purposes.
- 1807.301 Eligible Uses.
- 1807.302 Restrictions on use of a CMF Award.
- 1807.303 Authorized uses of Program Income.

Subpart D—Qualification as Affordable Housing

- 1807.400 Affordable Housing-general.
- 1807.401 Affordable Housing-Rental Housing.
- 1807.402 Affordable Housing-Homeownership.
- 1807.403 Economic Development Activities.

Subpart E—Leveraged Capital; Eligible Project Costs; Commitment; Project Completion

- 1807.500 Leveraged Capital; Eligible Project Costs.
- 1807.501 Commitments.
- 1807.502 CMF Award limits.
- 1807.503 Project Completion; Property standards.

Subpart F—Tracking Funds; Uniform Administrative Requirements; Nature of Funds

- 1807.600 Tracking funds.
- 1807.601 Uniform Administrative Requirements.
- 1807.602 Nature of funds.

Subpart G—Notice of Funds Availability; Applications

- 1807.700 Notice of funds availability.
- 1807.701 through 1807.799 [Reserved]

Subpart H—Evaluation and Selection of Applications

- 1807.800 Evaluation and selection-general.
- 1807.801 Evaluation of Applications.

Subpart I—Terms and Conditions of a CMF Award

- 1807.900 Assistance agreement.
- 1807.901 Payment of funds.
- 1807.902 Data collection and reporting.

- 1807.903 Compliance with government requirements.
- 1807.904 Lobbying restrictions.
- 1807.905 Criminal provisions.
- 1807.906 CDFI Fund deemed not to control.
- 1807.907 Limitation on liability.
- 1807.908 Fraud, waste and abuse.

Authority: 12 U.S.C. 4569.

Subpart A—General Provisions

§ 1807.100 Purpose.

The purpose of the Capital Magnet Fund (CMF) is to attract private capital for and increase investment in Affordable Housing Activities and related Economic Development Activities in every State of the United States, the District of Columbia, or territories of the United States.

§ 1807.101 Summary.

(a) Through the CMF, the CDFI Fund competitively awards grants to Certified CDFIs and qualified Nonprofit Organizations to leverage dollars for:

(1) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing primarily for Low-Income Families; and

(2) The financing of Economic Development Activities.

(b) The CDFI Fund selects Recipients to receive CMF Awards through a competitive Application process. CMF Awards may only be used for Eligible Uses set forth in subpart C of this part. Each Recipient will enter into an Assistance Agreement that will require it to leverage the CMF Award amount and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1807.102 Relationship to other CDFI Fund programs.

Restrictions on applying for, receiving, and using the CMF Awards in conjunction with awards under other programs administered by the CDFI Fund are set forth in the applicable funding notice.

§ 1807.103 Recipient not instrumentality.

No Recipient shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1807.104 Definitions.

For the purpose of this part:

Act means the Housing and Economic Recovery Act of 2008, as amended, Public Law 110–289, section 1131;

Affiliate means any entity that Controls, is Controlled by, or is under common Control with, an entity;

Affordability Period means a period of at least 10 years or other longer time period in the applicable NOFA issued by the CDFI Fund, during which time

the Recipient must ensure the affordability requirements set forth herein and/or the Assistance Agreement are met for each Project;

Affordable Housing means housing that meets the requirements set forth in subpart D of this part;

Affordable Housing Activities means the Development, Preservation, Rehabilitation, and/or Purchase of Affordable Housing or Secondary Market Mortgage Purchase;

Affordable Housing Fund means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

(1) Manages and makes investment decisions for; and

(2) Uses to finance Affordable Housing Activities in any combination of debt, grant, or equity investments, which does not include the purchase of stock, securities, or the buy-out of partnership interests;

Applicant means any entity submitting an Application for a CMF Award;

Application means the CDFI Fund's CMF application form, including any written or verbal information in connection therewith and any exhibits, attachments, appendices and/or written or verbal supplements thereto, submitted by an Applicant to the CDFI Fund, in response to the applicable Notice of Funds Availability (NOFA);

Appropriate Federal Banking Agency has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;

Appropriate State Agency means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

Assistance Agreement means a formal, written agreement between the CDFI Fund and a Recipient that specifies the terms and conditions of assistance under this part;

Capital Magnet Fund (or CMF) means the program authorized by the Act and implemented under this part;

Certified Community Development Financial Institution (or Certified CDFI) means an entity that has been determined by the CDFI Fund to meet the certification requirements set forth in 12 CFR 1805.201;

CMF Award means the financial assistance in the form of a grant made by the CDFI Fund to a Recipient pursuant to this part;

CMF Unit means

(1) A single residential unit of Housing financed or supported with a CMF Award, rented or owned by a

Family, with dedicated kitchen and bath facilities that meets the requirements of subparts D and E, as applicable; or

(2) A single-room occupancy (SRO) unit, a group home, or an assisted living facility with shared common kitchen and bath facilities accompanied by an individual lease for each tenant that meets the requirements of subparts D and E of this part;

Committed for Use means as set forth in § 1807.501, that the Recipient is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment for Eligible Use of the CMF Award;

Community Development Financial Institutions Fund (or CDFI Fund) means the Community Development Financial Institutions Fund, the U.S. Department of the Treasury, established pursuant to the Community Development Banking and Financial Institutions Act of 1994, as amended, 12 U.S.C. 4701 *et seq.*;

Community Service Facility means the physical structure in which service programs directly benefit nearby residents of any affordable housing. These service programs serve residents of affordable housing and include, but are not limited to, health care, childcare, educational programs including literacy and after school programs, job training, food and nutrition services, arts, and/or social services, as further set forth in the Assistance Agreement;

Concerted Strategy means a formal planning document that evidences the connection between Affordable Housing Activities and Economic Development Activities. Such documents include, but are not limited to, a comprehensive, consolidated, or redevelopment plan, or some other local or regional planning document adopted or approved by the jurisdiction;

Control means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company;

Depository Institution Holding Company means a bank holding company or a savings and loan holding company as each are defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(w);

Development means any combination of the following activities: Land acquisition, demolition of existing facilities, and construction of new facilities, which may include site improvement, utilities development and rehabilitation of utilities, necessary infrastructure, utility services, conversion, and other related activities resulting in Affordable Housing;

Direct Administrative Expenses as described in 2 CFR 200.413 of the Uniform Administrative Requirements, means direct costs incurred by the Recipient, related to the financing and/or in support of Projects;

Economic Development Activity means the development, preservation, acquisition and/or rehabilitation of Community Service Facilities and/or other physical structures in which businesses operate in order to implement a Concerted Strategy to stabilize, sustain, or revitalize communities and neighborhoods physically proximate to any affordable housing benefiting a Low-Income Area or Underserved Rural Area, subject to subpart D of this part;

Economic Development Activity Fund means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

(1) Manages and makes investment decisions for; and

(2) Uses to finance Economic Development Activities in any combination of debt, grant, or equity, which does not include the purchase of stock, securities, or the buy-out of partnership interests;

Effective Date means the date that the Assistance Agreement is effective; such date is determined by the CDFI Fund after the Recipient has returned an executed Assistance Agreement, along with all required supporting documentation, including an opinion from its legal counsel, if required;

Eligible-Income means having, in the case of owner-occupied or rental Housing units, annual income at 120 percent or below of the area median income, adjusted for Family size, in the same manner as HUD makes these adjustments for its other published income limits;

Eligible Project Costs means all eligible development, financing, refinancing, acquisition, relocation, loan loss reserve, guarantee, predevelopment, and related soft costs incurred in the achievement of Project Completion, as described in the Assistance Agreement, paid using a CMF Award and any Leveraged Capital;

Eligible Uses means allowable uses of the CMF Award set forth in § 1807.301;

Extremely Low-Income means, in the case of owner-occupied or rental Housing units, having income at 30 percent or below of the area median income, adjusted for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low incomes;

Family means a household of one or more persons living in the same dwelling unit. All persons in a household who are related by birth, marriage or adoption are regarded as members of the Family. A Family may also include individuals living in a household who are not related to each other;

Feasibility Determination Expenses mean direct costs, as defined by the Uniform Administrative Requirements, and incurred by the Recipient to determine the feasibility of potential Affordable Housing Activities and/or Economic Development Activities to implement the CMF Award. These costs must be incurred before Project Commitment. Costs designated as Feasibility Determination Expenses cannot be deemed as Eligible Project Costs. Such expenses may include, but are not limited to, preliminary market studies, engineering, architectural analyses, financial feasibility analyses, and other costs as further detailed in the Assistance Agreement and guidance provided by the CDFI Fund;

Homebuyer means a Family that does not currently own any Single-family housing or is in the process of selling and replacing their primary residence. A Homebuyer may not own any other Single-family housing or Multi-family housing. Notwithstanding this definition, a Homebuyer includes a Family that owns a manufactured housing unit and is in the process of replacing or refinancing it, or owns a manufactured housing unit as part of the conversion of a manufactured housing park to a tenant-owned park or cooperative;

HOME Program means the HOME Investment Partnership Program established by the HOME Investment Partnerships Act under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*;

Homeownership means ownership interest in a home in fee simple, or by condominium, cooperative, mutual housing, or ground lease title interest, as allowed under State law, in one- to four-unit Single-family housing, or

ownership of a manufactured housing unit. The ownership interest is subject to the following additional requirements:

(1) Ownership interest may not merely consist of a right of possession under a contract for deed, installment contract, or land contract pursuant to which the deed is not given until the final payment is made; and

(2) Ownership interest is subject to the restrictions on affordability permitted under the Assistance Agreement and this part; mortgages, deeds of trust, or other liens or instruments securing debt on the property; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest;

Homeownership Program means an affordable housing program established by a Recipient for the purpose of providing direct financing or grants to Homebuyers to purchase Single-family housing. The Project Commitment requirements of § 1807.501 are satisfied if the board of directors of the Recipient makes a Project Commitment of the CMF Award to the Homeownership Program by resolution in a form and substance acceptable to the CDFI Fund;

Housing means Single-family and Multi-family residential units including, but not limited to, manufactured housing, permanent supportive housing, single-room occupancy (SRO) housing, assisted living, and group homes that are permanent in nature and not temporary, short term, transitional, or a dormitory, as further set forth by the CDFI Fund;

HUD means the Department of Housing and Urban Development established under the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3532 *et seq.*;

Indian Tribe means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). Each such Indian Tribe must be recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

Insured CDFI means a Certified CDFI that is an Insured Depository Institution or an Insured Credit Union;

Insured Credit Union means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund by the National Credit Union Administration pursuant to authority granted in 12 U.S.C. 1783 *et seq.*;

Insured Depository Institution means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation pursuant to authority granted in 12 U.S.C. 1813(c)(2);

Investment Period means the period beginning with the Effective Date and ending on the fifth year anniversary of the Effective Date, or such other period as may be established by the CDFI Fund in the Assistance Agreement;

Leveraged Capital means capital raised to finance the costs for Affordable Housing Activities and Economic Development Activities that exceeds the dollar amount of the CMF Award, as further described in § 1807.500;

Loan Guarantee means the Recipient's use of the CMF Award to support an agreement to indemnify the holder of a loan for all or a portion of the unpaid principal balance in case of default by the borrower. The proceeds of the loan that is guaranteed with the CMF Award must be used for Affordable Housing Activities and/or Economic Development Activities;

Loan Loss Reserves means proceeds from the CMF Award that the Recipient will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable for Affordable Housing Activities and/or Economic Development Activities, or for related purposes that the CDFI Fund deems appropriate;

Low-Income means, in the case of owner-occupied or rental Housing units, having income at 80 percent or below of the area median income, adjusted for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes;

Low-Income Area (or LIA) means a census tract in which the median family income does not exceed 80 percent of the area median family income. With respect to a census tract located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater. In the case of a census tract located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide Non-Metropolitan Area median family income or the national Non-Metropolitan Area median family income, whichever is greater;

Low Income Housing Tax Credits (or LIHTCs) means credits against income tax under section 42 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. 42;

Metropolitan Area means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended, and as made available by the CDFI Fund for a specific Application funding round;

Multi-family housing means residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, or an apartment;

Non-Metropolitan Area means counties that are designated as Non-Metropolitan Counties by the Office of Management and Budget (OMB) pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended, and as made available by the CDFI Fund for a specific Application funding round;

Nonprofit Organization means any corporation, trust, association, cooperative, or other organization that is:

(1) Designated as a nonprofit or not-for-profit entity under the laws of the organization's State or Indian Tribe of formation;

(2) Exempt from Federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, with the exception of organizations affiliated with Indian Tribes; and

(3) Able to demonstrate, as set forth in the NOFA, that a share of its total assets is dedicated to the development or management of affordable housing;

Payment means the transmission of CMF Award dollars from the CDFI Fund to the Recipient;

Permanent Housing means Housing that is owned or is rented under a written lease with an initial lease term of six months or more;

Preservation means the acquisition, refinancing, recapitalization, of existing Multi-family rental housing or Single-family housing, with or without Rehabilitation, to create, maintain, or extend the affordability requirement as provided in subpart D of this part. Preservation may include the refinancing of owner-occupied Single-family housing or Multi-family rental housing to extend the existing affordability restrictions set to expire during the Investment Period, or other timeline as defined by the CDFI Fund, by at least an additional 10-year Affordability Period or as set forth in the

Assistance Agreement. Preservation may also include the imposition of a new Affordability Period on Housing not currently subject to affordability restrictions;

Presumptively Compliant or *Presumptive Compliance* means certain rules, requirements and designations under other Federal housing programs that the CDFI Fund deems to meet certain CMF requirements;

Program Income means gross income as described in 2 CFR part 200 and as further specified in the Recipient's Assistance Agreement;

Project means a specific Affordable Housing Activity, Economic Development Activity, or Homeownership Program the Recipient uses its CMF Award to finance or support, resulting in Project Completion;

Project Commitment means that the Recipient is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment to a Project as set forth in § 1807.501;

Project Completion means that all of the requirements set forth at § 1807.503 for a Project have been met;

Purchase means to use a CMF Award to provide financing to:

(1) A Family for Homeownership that meet the qualifications set forth in subparts D and E; or

(2) A developer or project sponsor for the acquisition of rental Housing that must meet the qualifications set forth in subparts D and E of this part;

Recipient means an Applicant selected by the CDFI Fund to receive a CMF Award pursuant to this part;

Rehabilitation means any repairs and/or capital improvements that contribute to the long-term preservation, current building code compliance, habitability, sustainability, or energy efficiency of Affordable Housing;

Revolving Loan Fund means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

(1) Manages and approves lending decisions for; and

(2) Uses to finance Affordable Housing Activities and/or Economic Development Activities wherein the repayments on such loans are used to finance additional loans;

Risk-Sharing Loan means loans consisting of the CMF Award and any Leveraged Capital made for Affordable Housing Activities and/or Economic Development Activities in which the risk of borrower default is shared by the Recipient with other lenders (e.g., participation loans);

Rural Area means a census tract that meets the definition of Rural Area per 12 CFR 1282.1 (Enterprise Duty To Serve Final Rule) that is: A census tract outside of a Metropolitan Statistical Area as designated by the Office of Management and Budget; or A census tract in a Metropolitan Statistical Area as designated by the Office of Management and Budget that is outside of the Metropolitan Statistical Area's Urbanized Areas, as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2;

Secondary Market Mortgage means a mortgage:

(1) Originated by a qualified third party lender as defined in guidance by the CDFI Fund and purchased by the Recipient in 12 months or less from the date of its origination using a CMF Award and evidenced by an agreement that meets subparts C, D and E of this part;

(2) For which the source of the origination is not the CMF Award; and

(3) That would not have been originated but for the Recipient's Secondary Market Mortgage Purchase;

Secondary Market Mortgage Purchase means the purchase of a Secondary Market Mortgage;

Service Area means the geographic area in which the Applicant proposes to use the CMF Award, and the geographic area approved by the CDFI Fund in which the Recipient must use the CMF Award as set forth in its Assistance Agreement. Service Area may include a national Service Area for Rural Areas and additional areas that may be defined by the CDFI Fund in the applicable NOFA;

Single-family housing means a one- to four- unit Family residence, a condominium unit, a cooperative unit, mutual housing, a manufactured housing unit only, or the combination of a manufactured housing unit and lot;

State means the states of the United States, the District of Columbia, or any territory of the United States;

State-Insured Credit Union means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

Subsidiary means any company that is majority owned, or Controlled directly, or indirectly, by another company. For purposes of ownership, a Subsidiary's parent company possesses more than 50 percent ownership of the Subsidiary;

Underserved Rural Area means all Rural Areas as defined as a census tract that meets the definition of Rural Area per 12 CFR 1282.1 (Enterprise Duty To Serve Final Rule) that is: A census tract outside of a Metropolitan Statistical Area as designated by the Office of Management and Budget; or A census tract in a Metropolitan Statistical Area as designated by the Office of Management and Budget that is outside of the Metropolitan Statistical Area's Urbanized Areas, as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2;

Uniform Administrative Requirements means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200);

Very Low-Income means, in the case of owner-occupied or rental Housing, having income at 60 percent or below of the area median income, with adjustments for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes;

§ 1807.105 Waiver authority.

The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would not adversely affect achieving the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the **Federal Register**.

§ 1807.106 Presumptive Compliance with Other Federal Programs.

The CDFI Fund may deem certain other Federal program requirements, designations and/or reporting criteria as being Presumptively Compliant with any of the CMF program requirements set forth herein. Recipients participating in and meeting the program requirements of such designated Federal programs may be deemed compliant with certain CMF program requirements, as provided for in the

Assistance Agreement or other CDFI Fund guidance and materials.

§ 1807.107 Applicability of regulations for CMF Awards.

(a) The regulations of this part are applicable for all uncommitted funds from prior CMF Awards issued as of June 25, 2024, as well as all CMF Awards made pursuant to all Notices of Funds Availability published after June 25, 2024.

(b) The definition of “Nonprofit Organization” is applicable to any Notice of Funds Availability published on or after January 1, 2026; until that time, the definition of “Nonprofit Organization” in § 1807.104 of the 2016 interim rule remains in effect.

Subpart B—Eligibility

§ 1807.200 Applicant eligibility.

(a) *General requirements.* An Applicant will be deemed eligible to apply for a CMF Award if it is:

(1) A Certified CDFI. An entity may meet the requirements described in this paragraph (a)(1) if it is:

(i) A Certified CDFI, as set forth in 12 CFR 1805.201;

(ii) A Certified CDFI that has been in existence as a legally formed entity as set forth in the applicable Notice of Funds Availability (NOFA); or

(2) A Nonprofit Organization having as one of its principal purposes, the development or management of affordable housing. A Nonprofit Organization may meet the requirements described in this paragraph (a)(2) if it:

(i) Has been in existence as a legally formed entity as set forth in the applicable NOFA;

(ii) Demonstrates, through articles of incorporation, by-laws, or other board-approved documents, that the development or management of affordable housing are among its principal purposes; and

(iii) Demonstrates, by providing information described in the Application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund, that a certain percentage, set forth in the applicable NOFA, of the Applicant's total assets are dedicated to the development or management of affordable housing.

(b) *Eligibility verification.* An Applicant shall demonstrate that it meets the eligibility requirements described in paragraph (a)(2) of this section by providing information described in the Application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund. For

an Applicant seeking eligibility under paragraph (a)(1) of this section, the CDFI Fund will verify that the Applicant is a Certified CDFI as described in the applicable NOFA.

1807.201 Through 1807.299 [Reserved]

Subpart C—Eligible Purposes; Eligible Uses; Restrictions

§ 1807.300 Eligible purposes.

Each Recipient must use its CMF Award for the Eligible Uses described in § 1807.301 so long as such Eligible Uses increase private capital for and increase investment in:

(a) Development, Preservation, Rehabilitation, and/or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income, and Low-Income Families; and

(b) Economic Development Activities, as further described in § 1807.403, which stabilize, sustain, or revitalize communities and neighborhoods and must be: located in a Low-Income Area or Underserved Rural Area; undertaken in conjunction with any affordable housing that is authorized as such under applicable local, State or Federal housing program laws, and reasonably available to, physically proximate to, and beneficial to residents of affordable housing.

§ 1807.301 Eligible Uses.

The Recipient must use its CMF Award to finance and support Affordable Housing Activities and/or Economic Development Activities through the following Eligible Uses:

(a) To capitalize Loan Loss Reserves;

(b) To capitalize a Revolving Loan Fund;

(c) To capitalize an Affordable Housing Fund;

(d) To capitalize an Economic Development Activity Fund;

(e) To make Risk-Sharing Loans; and

(f) To provide Loan Guarantees.

§ 1807.302 Restrictions on use of a CMF Award.

(a) The Recipient may not use its CMF Award for the following:

(1) Political activities;

(2) Advocacy;

(3) Lobbying, whether directly or through other parties;

(4) Counseling services (including Homebuyer or financial counseling);

(5) Travel expenses;

(6) Preparing or providing advice on tax returns;

(7) Emergency shelters (including shelters for disaster victims);

(8) Nursing homes;

(9) Convalescent homes;

(10) Residential treatment facilities;

(11) Correctional facilities; or

(12) Dormitories.

(b) The Recipient shall not use the CMF Award to finance or support Projects that include:

(1) The operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or any of the businesses of activities set forth in 13 CFR 120.110(c) through (p), or any other businesses deemed inconsistent with the general purpose the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 *et seq.*); or

(2) Farming activities (within the meaning of the Internal Revenue Code (IRC) section 2032A(e)(5)(A) or (B)), if, as of the close of the taxable year of the taxpayer conducting such trade or business, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such trade or business, exceeds \$500,000.

(c) For each individual CMF Award, the Recipient may not use more than 30 percent of its CMF Award for Economic Development Activities, if such use is approved in its applicable Assistance Agreement.

(d) Any Recipient that uses its CMF Award for a Loan Guarantee or Loan Loss Reserves must ensure that loan(s) made pursuant to a Loan Guarantee or Loan Loss Reserves finance Affordable Housing Activities and/or Economic Development Activities. The Affordable Housing resulting from the Recipient's Loan Guarantee or Loan Loss Reserve shall be tracked during the Affordability Period for compliance with the affordability requirements as set forth in subpart D of this part.

(e) If loans that are made pursuant to a Loan Guarantee or Loan Loss Reserves are repaid during the Investment Period, the Recipient must use the funds made available by the loan repayment as Program Income as set forth in the Recipient's Assistance Agreement.

(f) The Recipient may use its CMF Award for Direct Administrative Expenses or Feasibility Determination Expenses at amounts set forth in the applicable NOFA and corresponding Assistance Agreement. Neither Direct Administrative Expenses nor Feasibility Determination Expenses can be attributable to Eligible Project Costs for a Project.

§ 1807.303 Authorized uses of Program Income.

(a) Program Income earned in the form of principal and equity repayments must be used by the Recipient in the manner further set forth in the Assistance Agreement.

(b) Program Income earned in the form of interest payments, and all other forms of Program Income (except for that which is earned as described in paragraph (a) of this section), must be used by the Recipient as set forth in the Assistance Agreement and in accordance with 2 CFR part 200.

Subpart D—Qualification as Affordable Housing**§ 1807.400 Affordable Housing—General.**

(a) For any amount of the CMF Award used for Affordable Housing Activities, 100 percent of such Eligible Project Costs must be attributable to Affordable Housing, meaning that the Affordable Housing complies with the affordability qualifications set forth in this subpart for Eligible-Income Families. Further, as a subset of said 100 percent, greater than 50 percent of the Eligible Project Costs must be attributable to Affordable Housing that comply with the affordability qualifications set forth in this subpart for Low-Income, Very Low-Income, or Extremely Low-Income Families, or as further set forth in the applicable NOFA and/or Assistance Agreement.

(b) Affordable Housing must be Permanent Housing.

(c) All the occupants of the Affordable Housing must not be full-time students unless they are:

- (1) Married students who file a joint tax return;
- (2) Students who receive assistance under Title IV of the Social Security Act;
- (3) Students enrolled in a job training program;
- (4) Students who are single parents with children who are their dependents, as defined in IRC sec. 152;
- (5) Students who previously were part of a foster care program; or
- (6) Meet other criteria specified by the CDFI Fund.

§ 1807.401 Affordable Housing—Rental Housing.

To qualify as Affordable Housing, each rental Multi-family housing Project financed with a CMF Award must have at least 20 percent of the units rent-restricted to any combination of Low-Income, Very Low-Income, or Extremely Low-Income Families and must comply with the rent limits as set forth in the applicable NOFA and Assistance

Agreement in any CMF funding round. The CDFI Fund may require a greater percentage of the units per Project to be income-targeted and/or require a specific targeted income commitment in any given CMF round, as set forth in the applicable NOFA and Assistance Agreement.

(a) *Rent limitations.* The gross rent limits for Affordable Housing are further specified in the Assistance Agreement.

(b) *Nondiscrimination against rental assistance subsidy holders.* The Recipient shall require that the owner of a rental unit cannot refuse to lease the unit to a Section 8 Program certificate or voucher holder (24 CFR part 982, Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(c) *Initial rent schedule and utility allowances.* The Recipient shall ensure that utility allowances and submetering rules are consistent with regulations concerning utility allowances and submetering in buildings that are subject to gross rent restrictions as set forth in the Assistance Agreement and under IRC sec. 42(g)(2), as applicable.

(d) *Periods of affordability.* Housing under this section must meet the affordability requirements during the Affordability Period. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership and must be imposed by deed restrictions, covenants running with the land, or other recording instruments. Upon receipt of a written approval from the CDFI Fund, a Recipient may use a different recording instrument as provided for in the Assistance Agreement. The affordability restrictions are allowed to terminate upon foreclosure or transfer in lieu of foreclosure. To the extent allowed under State law, in the event of a sale of property at foreclosure, transfer in lieu of foreclosure, short sale or other types of disposition, proceeds available to pay off a mortgage financed with a CMF Award shall be treated as Program Income.

(e) *Standard lease terms and conditions.* All tenants occupying rental CMF Units shall be required to enter into a written lease or rental agreement setting forth the terms and requirements which are, but not limited to,

compliance with applicable State and local law.

(f) *Tenant income determination.* (1) At the time of each initial lease and occupancy, the tenant income shall be determined to ascertain income eligibility. During the Affordability Period, the existing tenant income shall be re-examined in a manner as set forth in the Assistance Agreement. Tenant income examination and verification are ultimately the responsibility of the Recipient. Tenant income shall include income from all Family members. The Recipient must require the Project owner to obtain information on rents and occupancy of Affordable Housing financed or supported with a CMF Award in order to demonstrate compliance with this section.

(2) One of the following two definitions of “annual income” must be used to determine whether a Family is income-eligible:

(i) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes; or

(ii) Annual Income as defined at 24 CFR 5.609 (except that when determining the income of a homeowner for an owner-occupied Rehabilitation Project, the value of the homeowner’s principal residence may be excluded from the calculation of “Net Family Assets,” as defined in 24 CFR 5.603).

(3) The CDFI Fund reserves the right to deem certain government programs, under which a Family is a recipient, as income eligible for purposes of meeting the tenant income requirements under this section.

(g) *Over-income tenants.* (1) CMF Units continue to qualify as Affordable Housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to the CDFI Fund are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(2) The maximum rent for tenants whose incomes no longer qualify is either 30 percent of the Family’s annual income, or the amount payable by the tenants under State or local law, whichever is less; however, tenants whose income exceeds the Eligible-Income level are not required to pay rent in excess of the market rent for comparable, unassisted units in the neighborhood.

(3) If the income of a tenant of a CMF Unit no longer qualifies, the Recipient may designate another unit within the Project as a rent-restricted replacement unit that meets the affordability

qualifications for the same income category as the original unit, as further set forth in the Recipient's Assistance Agreement. If there is not an available replacement unit, the Recipient must fill the first available vacancy with a tenant that meets the affordability qualifications for the same income category of the original unit as necessary to maintain compliance with the CMF requirements and the Assistance Agreement.

§ 1807.402 Affordable Housing—Homeownership.

(a) *Purchase with or without Rehabilitation.* (1) A Recipient that uses the CMF Award to finance or support the Purchase of Housing by a qualified Homebuyer must ensure that the Housing and Homebuyer meet the affordability requirements of this subpart as follows:

(i) *Single-family housing.* The Housing must be a Single-family housing.

(ii) *Purchase price limits.* The Single-family housing does not exceed the purchase price limits for the area under the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index designated by the CDFI Fund as set forth in the applicable Assistance Agreement; the related mortgage must be originated based upon an assessment of whether the Homebuyer can repay the loan based on terms and conditions that are transparent and understandable to the Homebuyer, and the mortgage is affordable to the Homebuyer over the life of the loan.

(iii) *Qualifying Homebuyer.* The Single-family housing must be purchased by a qualifying Homebuyer.

(iv) *Eligible-Income requirements.* A qualifying Homebuyer must have a household income at no greater than Eligible-Income. To determine whether a Homebuyer qualifies as Eligible Income (or at any other income level specified in the Assistance Agreement) under this section, the Recipient must use the Homebuyer's adjusted gross income as defined under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax reporting purposes, or other methodology for determining income eligibility as provided in the Assistance Agreement. Homebuyers of one- to four-unit Single-family housing may rent the additional unit(s) as Permanent Housing if at least one unit is maintained as the principal residence of the Homebuyer.

(v) *Periods of affordability.* Single-family housing under this section must become the principal residence of the Homebuyer at the time of Purchase and is subject to the affordability

requirements during the Affordability Period and as further set forth in § 1807.402(a)(1)(vi). The Affordability Period does not apply to additional units rented as Permanent Housing, as described in § 1807.402(a)(1)(iv).

(vi) *Resale.* To ensure that the CMF Awards are being used for qualifying Families during the Affordability Period, recoupment, replacement, and/or resale strategies must be established and imposed by the Recipient. A recoupment, replacement, and/or resale strategy must ensure that:

(A) In the event the qualifying Family sells the Housing in five years or less from the date of Purchase, the Housing must be sold to an Eligible-Income Family meeting the qualifications set forth in § 1807.402. Otherwise, the CMF Award investment must be recouped by the Recipient and the Housing replaced with a replacement unit to satisfy the affordability requirement for the remainder of the Affordability Period. If the Housing is replaced, the replacement unit must be sold to an Eligible-Income Family and must also meet the qualifications set forth in § 1807.402.

(B) In the event the qualifying Family sells the Housing any time after five years from the date of Purchase but before the end of the Affordability Period, the Housing must either be sold to a new Eligible-Income Family or, if the Housing is not sold to an Eligible-Income Family, the CMF investment must be recouped as Program Income in a proportional amount from net sale proceeds, as further set forth in the Assistance Agreement. If the Housing is not sold to an Eligible-Income Family after the five-year anniversary of the Purchase date and the Recipient recoups a proportional amount of the CMF Awards as Program Income, the Recipient is not required to replace the sold Housing with a replacement unit.

(2) The Recipient may design and implement its own recoupment, replacement, and/or resale strategy, subject to the requirements of § 1807.402(a)(1)(vi) to maintain compliance with the CMF requirements and the Assistance Agreement. Deed restrictions, covenants running with the land, or other similar instruments may be used as the mechanism to impose a strategy. The Recipient shall report to the CDFI Fund the event of resale and/or recoupment and redeployment of the CMF Award, or an equivalent amount, in the manner described in the Assistance Agreement or other guidance issued by the CDFI Fund.

(3) The affordability restrictions are allowed to terminate upon occurrence of any of the following termination events:

foreclosure, transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD. The termination of the affordability restrictions pursuant to any of the aforementioned terminating events will result in the Housing no longer being subject to a recoupment, replacement, and/or resale strategy as previously imposed by the Recipient. The Recipient may use purchase options, rights of first refusal or other preemptive rights to purchase the Housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original Affordability Period, the owner of record before the termination event obtains an ownership interest in the Housing.

(b) *Rehabilitation not involving purchase.* Single-family housing that is currently owned by a qualifying Family, as set forth in § 1807.400, qualifies as Affordable Housing if it meets the following requirements of this paragraph (b):

(1) The estimated value of the Single-family housing, after Rehabilitation, does not exceed the purchase price limits for the area, as used in the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index designated by the CDFI Fund. The underlying mortgage(s) should be affordable for the Homebuyer;

(2) The Single-family housing is owned by a qualifying Family as set forth in § 1807.400 and is the only principal residence of the Family at the time of Project Commitment and remains the principal residence of the Family throughout the Affordability Period as described in paragraph (b)(3) of this section;

(3) Single-family housing under this paragraph (b) must meet the affordability requirements during the Affordability Period upon Project Completion or meet the recoupment, replacement, and/or resale provisions of paragraph (a)(5) of this section; and

(4) Single-family housing under this paragraph (b) currently owned by a qualifying Family may be rehabilitated to convert a portion of the Housing into one to three permanent additional units, each with a separate means of ingress/egress, kitchen, sleeping area, bathing area, and bathroom facilities, independent of the primary dwelling. The additional units may be rented as Permanent Housing as long as the primary dwelling remains the principal residence of the Family. While the Affordability Period applies to the primary dwelling, it does not apply to the additional units discussed in this section.

(c) *Ownership interest.* The owner must meet the definition of Homebuyer and the ownership in the Single-family housing assisted under this section must meet the definition of Homeownership as defined in § 1807.104.

(d) *New construction without Purchase.* Newly constructed Single-family housing that is built on property currently owned by a Family that will occupy the Single-family housing upon Project Completion, qualifies as Affordable Housing if it meets the requirements under paragraph (a) of this section.

(e) *Converting rental units to Homeownership units for existing tenants.* Rental CMF Units may be converted to Homeownership units by selling, donating, or otherwise conveying the units to the existing tenants only under an existing documented rent-to-own program to enable the tenants to become Homebuyers in accordance with the requirements of this section. The Homeownership units are subject to a minimum period of affordability equal to the remaining rental Affordability Period, as further specified in the Assistance Agreement.

§ 1807.403 Economic Development Activities.

A CMF Award used for Economic Development Activities must stabilize, sustain, or revitalize communities and neighborhoods to meet the requirements set forth herein. For each individual CMF Award round, the Recipient may use no more than 30 percent of its CMF Award for Economic Development Activities, if such use is approved in its applicable Assistance Agreement.

(a) *Eligible uses.* A Recipient may use its Economic Development Activity Fund to finance and/or support Economic Development Activities through any Eligible Use pursuant to § 1807.301 except for Affordable Housing Fund.

(b) *Minimum use Term.* Community Service Facilities or physical structures resulting from Economic Development Activities must be used for allowable Economic Development Activities for a minimum of three years commencing with Project Completion.

(c) *Concerted strategy.* Economic Development Activities must complement and be undertaken as part of a Concerted Strategy that includes, but is not limited to, education, employment, transportation, financial services, commercial goods and services and other opportunities in a Low-Income Area or Underserved Rural Area.

(d) *In Conjunction with Affordable Housing Activities.* Economic Development Activities must be:

(1) Located in a Low-Income Area or Underserved Rural Area;

(2) Undertaken in conjunction with any affordable housing that is subject to or authorized by local, State or Federal laws; and

(3) Reasonably available, physically proximate, and benefit residents of such affordable housing. For a Metropolitan Area, the Economic Development Activities must be located within the same census tract or within one mile of such affordable housing. For a Non-Metropolitan Area, Economic Development Activities must be located within the same county, township, or village, or within 10 miles of such affordable housing.

Subpart E—Leveraged Capital; Eligible Project Costs; Commitments; Project Completion

§ 1807.500 Leveraged Capital; Eligible Project Costs.

(a) *Eligible project costs.* Excluding both the total amount of Direct Administrative Expenses and Feasibility Determination Expenses, each CMF Award must result in Eligible Project Costs that equals at least 10 times the amount of the CMF Award, or some higher standard established by the CDFI Fund in the Recipient's Assistance Agreement. Such Eligible Project Costs must be for Affordable Housing Activities and Economic Development Activities, as set forth in the Assistance Agreement.

(b) *Leveraged capital.* (1) The applicable NOFA and/or the Assistance Agreement may set forth a required multiplier of Leveraged Capital that must be funded by private, non-governmental sources.

(2) The Recipient must report to the CDFI Fund the amount of Leveraged Capital, with the following limitations:

(i) No costs attributable to prohibited uses, as set forth in § 1807.302(a) and (b), may be reported as Leveraged Capital;

(ii) All uses of Leveraged Capital to finance and/or support Affordable Housing Activities shall comply with §§ 1807.400, 1807.401 and 1807.402, and as further described in the Assistance Agreement;

(iii) All uses of Leveraged Capital to finance and/or support Economic Development Activities shall comply with § 1807.403, and as further described in the Assistance Agreement.

§ 1807.501 Commitments.

(a) The CMF Award must be Committed for Use by the Recipient to

one or more Eligible Uses as provided in § 1807.301 within two years from the Effective Date of the CMF Award, as such date designated in the Recipient's Assistance Agreement.

(b) The Recipient must achieve Project Commitment of the entire CMF Award within three years from the Effective Date of the CMF Award as designated in the Recipient's Assistance Agreement.

(c) The Recipient must evidence a Project Commitment with a written, legally binding agreement to invest in a Project by providing the CMF Award proceeds to the qualifying Family, developer or project sponsor in which:

(1) Construction on real estate can reasonably be expected to start within 12 months of the Project Commitment agreement date; or

(2) Property title on real estate will be transferred within six months of the Project Commitment agreement date; or

(3) Construction schedule on real estate ensures Project Completion within five years of a date specified in the Assistance Agreement; or

(4) The Recipient has entered into a Secondary Market Mortgage Purchase agreement with a third-party lender to purchase the qualified mortgages and the subject mortgages would not otherwise have been originated by the third-party lender absent that agreement; or

(5) A commitment for a qualified Homeownership Program has been made by the action of the Recipient's Board of Directors; or

(6) The Recipient has entered into a Loan Guarantee agreement or has established a cash reserve, escrow, or accounting-based accrual reserve with a lender or investor for a Loan Loss Reserve.

§ 1807.502 CMF Award limits.

An eligible Applicant and its Subsidiaries and Affiliates may not be awarded more than 15 percent of the aggregate funds available for the CMF Awards during any year.

§ 1807.503 Project Completion; Property standards.

(a) Upon Project Completion, the Project must be placed into service by the date designated in the Assistance Agreement. Project Completion for Affordable Housing Activities and Economic Development Activities occurs, as determined by the CDFI Fund, when:

(1) All necessary title transfer requirements and construction work have been performed;

(2) The property standards of paragraph (b) of this section have been met;

(3) The final drawdown of the CMF Award has been made to the project sponsor or developer;

(4) For Preservation, the refinancing of the loan is closed and the underlying real estate is in compliance with all CMF requirements and, if applicable, Rehabilitation is completed and the requirements set forth in this paragraph (a) are achieved;

(5) For qualified Secondary Market Mortgage Purchase, the loan purchase transaction is complete, all CMF Secondary Market Mortgage requirements are met, and the CMF Award is disbursed to the lender (*i.e.*, seller of the loan);

(6) For Loan Loss Reserves, the Loan Loss Reserve is established and the CMF Award is disbursed to an escrow, cash reserve, or obligated to an accounting-based accrual reserve to secure loans for Affordable Housing or Economic Development Activities that meet the requirements of subpart D of this part;

(7) For Loan Loss Guarantees, the Loan Guarantee is executed guaranteeing loans for Affordable Housing or Economic Development Activities that meet the requirements of subpart D of this part.

(b) By the Project Completion date, the Project must meet the requirements of this part, including the following property standards:

(1) *Code requirements.* Projects that are constructed or Rehabilitated with a CMF Award must meet all applicable State and local codes, Rehabilitation standards, ordinances, and zoning requirements at the time of Project Completion or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable) of the International Code Council.

(2) *Other requirements.* In addition, Projects must meet the following requirements:

(i) *Accessibility.* The Project must meet all applicable accessibility requirements set forth at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131 through 12189) implemented at 28 CFR parts 35 and 36, as applicable. Multi-family housing must meet all applicable design and construction requirements set forth in 24 CFR 100.205 which implement Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)(42 U.S.C. 3601–3619). Those design and construction requirements are the same rules that apply to “covered multifamily dwellings,” as defined in 24 CFR 100.201.

(ii) *Disaster mitigation.* The Project must meet all applicable State and local codes, ordinances, or other disaster mitigation requirements (*e.g.*, earthquake, hurricanes, flooding, wild fires), or other requirements as the Department of Housing and Urban Development has established in 24 CFR part 93.

(iii) *Lead-based paint.* The Project must meet all applicable lead-based paint requirements, including those set forth in 24 CFR part 35.

(3) *Rehabilitation standards.* In addition, all Rehabilitation Projects must meet the following requirements:

(i) For rental Housing, if the remaining useful life of one or more major systems is less than the Affordability Period, the Recipient must ensure that, at Project Completion, the developer or Project sponsor establishes a replacement reserve and that monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. Major systems include: structural support; roofing; cladding and weatherproofing (*e.g.*, windows, doors, siding, gutters); plumbing; electrical; heating, ventilation, and air conditioning.

(ii) For Homeownership Single-family housing, the Recipient must ensure that, at Project Completion, the Housing is decent, safe, sanitary, and in good repair. The Recipient must ensure that timely corrective and remedial actions are taken to address identified life-threatening deficiencies.

(4) *Manufactured housing.* All manufactured housing must meet the Manufactured Home Construction and Safety Standards set forth in 24 CFR part 3280. These standards preempt State and local laws or codes, which are not identical to the Federal standards for the new construction of manufactured housing. The installation of all manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer’s written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using a CMF Award must meet the requirements set out in paragraph (b)(1) of this section.

Subpart F—Tracking Funds; Uniform Administrative Requirements; Nature of Funds

§ 1807.600 Tracking funds.

The Recipient shall develop and maintain an internal tracking and reporting system that ensures that the

CMF Award is used in accordance with this part and the Assistance Agreement.

§ 1807.601 Uniform Administrative Requirements.

The Uniform Administrative Requirements apply to all CMF Awards.

§ 1807.602 Nature of funds.

CMF Awards are Federal financial assistance with regard to the application of Federal civil rights laws.

Subpart G—Notice of Funds Availability; Applications

§ 1807.700 Notice of funds availability.

Each Applicant must submit a CMF Award Application in accordance with the applicable Notice of Funds Availability (NOFA) published in the **Federal Register**. The NOFA will advise prospective Applicants on how to obtain and complete an Application and will establish deadlines and other requirements. The NOFA will specify Application evaluation factors and any limitations, special rules, procedures, and restrictions for a particular Application round. After receipt of an Application, the CDFI Fund may request clarifying or technical information on the materials submitted as part of the Application.

1807.701 Through 1807.799 [Reserved]

Subpart H—Evaluation and Selection of Applications

§ 1807.800 Evaluation and selection—general.

Each Applicant will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive a CMF Award based on a review process that will include a paper or electronic Application, and may include an interview(s) and/or site visit(s), and that is intended to:

(a) Ensure that Applicants are evaluated in a fair and consistent manner based on the criteria outlined in the NOFA;

(b) Ensure that each Recipient can successfully meet its performance goals and achieve Affordable Housing Activity and Economic Development Activity impacts;

(c) Ensure that Recipients represent a geographically diverse group of Applicants serving Metropolitan Areas and Rural Areas across the United States to address economic distress. Criteria of economic distress may include:

(1) The percentage of Low-Income Families or the extent of poverty;

(2) The rate of unemployment or underemployment;

(3) The extent of disinvestment;

(4) Economic Development Activities that target Extremely Low-Income, Very Low-Income, and Low-Income Families within the Recipient's Service Area; and

(5) Any other criteria the CDFI Fund shall set forth in the applicable NOFA; and

(d) Take into consideration other factors as set forth in the applicable NOFA.

§ 1807.801 Evaluation of Applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive a CMF Award if it fails to meet the eligibility requirements described in § 1807.200 and in the applicable NOFA, or if the Applicant has not submitted complete Application materials. For the purposes of this paragraph (a), the CDFI Fund reserves the right to request additional information from the Applicant, if the CDFI Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting Applications to receive assistance, the CDFI Fund will evaluate the Applicant's likelihood of success in meeting the factors set forth in the applicable NOFA.

(c) *Other factors.* The CDFI Fund may consider any other factors that it deems appropriate in reviewing an Application, as set forth in the applicable NOFA, the Application and related guidance materials.

(d) *Consultation with appropriate regulatory agencies.* In the case of an Applicant that is a Federally regulated financial institution, the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to making a final award decision and prior to entering into an Assistance Agreement.

(e) *Recipient selection.* The CDFI Fund will select Recipients based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part.

Subpart I—Terms and Conditions of a CMF Award

§ 1807.900 Assistance agreement.

(a) Each Applicant that is selected to receive a CMF Award must enter into an Assistance Agreement with the CDFI Fund. The Assistance Agreement will set forth certain required terms and conditions for the CMF Award that may include, but are not limited to, the following:

- (1) The amount of the CMF Award;
- (2) The approved Eligible Uses of the CMF Award;
- (3) The approved Service Area;
- (4) The time period by which the CMF Award proceeds must be Committed for Use;

(5) The required documentation to evidence Project Completion; and

(6) Performance goals that have been established by the CDFI Fund pursuant to this part, the NOFA, and the Recipient's Application.

(b) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act or these regulations, or noncompliance with the terms and conditions of the Assistance Agreement, on the part of the Recipient, the CDFI Fund, in its discretion, may make a determination to:

- (1) Require changes in the performance goals set forth in the Assistance Agreement;
- (2) Revoke approval of the Recipient's Application;
- (3) Reduce or terminate the CMF Award;
- (4) Require repayment of any CMF Award that have been paid to the Recipient;
- (5) Bar the Recipient from applying for any assistance from the CDFI Fund; or

(6) Take such other actions as the CDFI Fund deems appropriate or as set forth in the Assistance Agreement.

(c) Prior to making a determination that the Recipient has failed to comply substantially with the Act or these regulations or an Assistance Agreement, the CDFI Fund shall provide the Recipient with reasonable notice and opportunity to cure any instances of noncompliance.

§ 1807.901 Payment of funds.

CMF Awards provided pursuant to this part may be provided in a lump sum payment or in some other manner, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any Payment under this part until a Recipient has satisfied all conditions set forth in the applicable NOFA and Assistance Agreement.

§ 1807.902 Data collection and reporting.

(a) *Data; general.* The Recipient must maintain such records as may be prescribed by the CDFI Fund that are necessary to:

- (1) Disclose the manner in which the CMF Award is used, including providing documentation to demonstrate Project Completion;
- (2) Demonstrate compliance with the requirements of this part and the Assistance Agreement; and
- (3) Evaluate the impact of the CMF Award.

(b) *Beneficiary demographics data.* The Recipient may be required to compile such data on the gender, race, ethnicity, national origin, or other

information on individuals that are benefiting from the CMF Award, as the CDFI Fund shall prescribe in the Assistance Agreement. Such data will be used to determine whether residents of the Recipient's Service Area are adequately served and to evaluate the impact of the CMF Award.

(c) *Access to records.* The Recipient must submit financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund or the U.S. Department of the Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CMF Award. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Recipient's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate and audit or provide for an audit at least annually. The CDFI Fund, if it deems appropriate, may prescribe access to record requirements for entities that receive a CMF Award from the Recipient.

(d) *Retention of records.* The Recipient shall comply with all applicable record retention requirements set forth in the Uniform Administrative Requirements (as applicable), the Assistance Agreement and the applicable NOFA.

(e) *Data collection and reporting—(1) Financial reporting.* (i) All nonprofit organization Recipients that are required to have their financial statements audited pursuant to the Uniform Administrative Requirements, must submit their single-audits by a time set forth in the applicable NOFA or Assistance Agreement. Nonprofit organization Recipients (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to the Uniform Administrative Requirements, must submit to the CDFI Fund a statement signed by the Recipient's authorized representative or certified public accountant, asserting that the Recipient is not required to have a single-audit pursuant to the Uniform Administrative Requirements as indicated in the Assistance Agreement. In such instances, the CDFI Fund may require additional audits to be performed and/or submitted to the CDFI Fund as stated in the applicable Notice of Funds Availability and Assistance Agreement.

(ii) For-profit Recipients (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants by a time set forth in the applicable NOFA or Assistance Agreement.

(iii) Regulated financial institutions (Insured Depository Institutions, Depository Institution Holding Companies, and Insured Credit Unions), including regulated nonprofit organizations, must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants by a time set forth in the applicable NOFA or Assistance Agreement.

(2) *Annual report.* (i) The Recipient shall submit a performance and financial report that shall be specified in the Assistance Agreement (annual report). The annual report consists of several components which may include, but are not limited to, a report on performance goals and measures, explanation of any Recipient noncompliance, and such other information as may be required by the CDFI Fund. The annual report components shall be specified and described in the Assistance Agreement.

(ii) The CDFI Fund will use the annual report to collect data to assess the Recipient's compliance with its performance goals and the impact of the CMF and the CDFI industry.

(iii) The Recipient is responsible for the timely and complete submission of the annual report, even if all or a portion of the documents actually are completed by another entity. If such other entities are required to provide information for the annual report, or such other documentation that the CDFI Fund might require, the Recipient is responsible for ensuring that the information is submitted timely and complete. The CDFI Fund reserves the right to contact such other entities and require that additional information and documentation be provided.

(iv) The CDFI Fund's review of the compliance of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union with the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

§ 1807.903 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Recipient shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, Uniform Administrative Requirements, and Executive Orders. Furthermore, Recipients must comply with the CDFI Fund's environmental quality regulations (12 CFR part 1815), as well as all other Federal environmental requirements applicable to Federal awards.

§ 1807.904 Lobbying restrictions.

No CMF Award may be expended by a Recipient to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1807.905 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Recipients and insiders.

§ 1807.906 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control a Recipient by reason of any CMF Award provided under the Act for the purpose of any applicable law.

§ 1807.907 Limitation on liability.

The liability of the CDFI Fund and the United States Government arising out of any CMF Award shall be limited to the amount of the CMF Award. The CDFI Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1807.908 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of a CMF Award should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Pravina Raghavan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2024-13797 Filed 6-24-24; 8:45 am]

BILLING CODE 4810-05-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2024-0542]

Safety Zones; Recurring Safety Zones in Captain of the Port Northern Great Lakes Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones for maritime events in the Captain of the Port Northern Great Lakes. Enforcement of these safety zones is necessary to protect the safety of life and property on the navigable waters immediately prior to, during, and immediately after this event. During the period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after events. During each enforcement period, vessels must stay out of the established safety zone and may only enter with permission from the designated representative of the Captain of the Port Northern Great Lakes.

DATES: The regulations listed in 33 CFR 165.918 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication, call or email Waterways Management division, LT Rebecca Simpson, Coast Guard Sector Northern Great Lakes, U.S. Coast Guard; telephone 906-635-3223, email ssmprevention@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.918 as per the time, dates, and locations indicated below:

(2) Canada Day Celebration Fireworks (Sault Sainte Marie, MI) from 10 p.m. through 11:00 p.m. on July 1, 2024. The zone includes all U.S. navigable waters of the St. Marys River within an approximate 1400-foot radius from the fireworks launch site, centered approximately 160 yards north of the U.S. Army Corp of Engineers Soo Locks North East Pier, at position 46°30'20.40" N, 084°20'17.64" W.

(3) Bay Harbor Yacht Club Fourth of July Celebration Fireworks (Petoskey, MI) from 10:00 p.m. through 11:00 p.m. on July 3, 2024. The zone includes all U.S. navigable waters of Lake Michigan

and Bay Harbor Lake within the arc of a circle with an approximate 750-foot radius from the fireworks launch site located on a barge in position 45°21'50" N, 085°01'37" W.

(4) Munising Fourth of July Celebration Fireworks (Munising, MI) from 7 p.m. through 11:45 p.m. on July 4, 2024. This zone includes all U.S. navigable waters of South Bay within an approximate 800-foot radius from the fireworks launch site at the end of the Munising City Dock, centered in position: 46°24'50.08" N, 086°39'08.52" W.

(5) Sault Sainte Marie Fourth of July Celebration Fireworks (Sault Sainte Marie, MI) from 10 p.m. through 10:30 p.m. on July 4, 2024. The zone includes all U.S. navigable waters of the St. Marys River within an approximate 1000-foot radius around the eastern portion of the U.S. Army Corp of Engineers Soo Locks North East Pier, centered in position: 46°30'19.66" N, 084°20'31.61" W. This notice also includes alternative rain dates one day after any affected event.

(6) Boyne City Fourth of July Celebration Fireworks (Boyne City, MI) from 9:30 p.m. through 11 p.m. on July 4, 2024. The zone includes all U.S. navigable waters of Lake Charlevoix, in the vicinity of Veterans Park, within the arc of a circle with an approximate 1400-foot radius from the fireworks launch site located in position 45°13'30" N, 085°01'40" W. This notice also includes alternative rain dates one day after any affected event.

(7) Mackinac Island Fourth of July Celebration Fireworks (Mackinac Island, MI) from 9:30 p.m. through 11 p.m. on July 4, 2024. The zone includes all U.S. navigable waters of Lake Huron within an approximate 750-foot radius of the fireworks launch site, centered approximately 1000 yards west of Round Island Passage Light, at position 45°50'34.92" N, 084°37'38.16" W. This notice also includes alternative rain dates one day after any affected event.

(8) Harbor Springs Fourth of July Celebration Fireworks (Harbor Springs, MI) from 10 p.m. through 11:30 p.m. on July 4, 2024. The zone includes all U.S. navigable waters of Lake Michigan and Harbor Springs Harbor within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located on a barge in position 45°25'30" N, 084°59'06" W.

(9) Alpena Fourth of July Celebration Fireworks (Alpena, MI) from 10 p.m. through 12:01 a.m. on July 3, 2024. The zone includes all U.S. navigable waters of Lake Huron within an approximate 1000-foot radius of the fireworks launch site located near the end of Mason

Street, South of State Avenue, at position 45°02'42" N, 083°26'48" W.

(10) Traverse City Fourth of July Celebration Fireworks (Traverse City, MI) from 10 p.m. through 10:30 p.m. on July 4, 2024. The zone includes all U.S. navigable waters of the West Arm of Grand Traverse Bay within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located on a barge in position 44°46'12" N, 085°37'06" W. This notice also includes alternative rain dates one day after any affected event.

(11) Petoskey Fourth of July Celebration Fireworks (Petoskey, MI) from 10 p.m. through 11 p.m. on July 4, 2024. The zone includes all U.S. navigable waters of Lake Michigan and Petoskey Harbor, in the vicinity of Bay Front Park, within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located in position 45°22'40" N, 084°57'30" W.

(12) National Cherry Festival Finale Fireworks (Traverse City, MI) from 10 p.m. through 10:30 p.m. on July 6, 2024. The zone includes all U.S. navigable waters of the West Arm of Grand Traverse Bay within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located on a barge in position 44°46'12" N, 085°37'06" W.

Under the provisions of 33 CFR 165.918, entry into, transiting, or anchoring within the safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Northern Great Lakes or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Northern Great Lakes via channel 16, VHF-FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of Port Northern Great Lakes or his designated representatives. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.918 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Sault Sainte Marie determines that the safety zone need not be enforced for the full duration stated in this notice he or she may suspend such enforcement and notify the public of the suspension via Broadcast Notice to Mariners and grant general

permission to enter the respective safety zone.

Dated: June 18, 2024.

J.R. Bendle,

Captain, U.S. Coast Guard, Captain of the Port Northern Great Lakes.

[FR Doc. 2024-13835 Filed 6-24-24; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2024-0032]

Safety Zone; Atlantic Intracoastal Waterway, Swansboro, NC

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zone for the Town of Swansboro Fireworks Display—July 4 Celebration display on July 3, 2024, to provide for the safety of life on navigable waterways of the Atlantic Intracoastal Waterway during this event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Swansboro, NC. During the enforcement period, entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation for the event listed in item 15, in Table 4 to paragraph (h)(4) to 33 CFR 165.506, will be enforced from 9 p.m. until 9:45 p.m. on July 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Chief Petty Officer Elvin Rodriguez, Waterways Management Division, U.S. Coast Guard Sector North Carolina; telephone 910-998-2239, email NCMarineevents@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone in 33 CFR 165.506(h)(4) for the Town of Swansboro Fireworks Display—July 4 Celebration fireworks display from 9 p.m. to 9:45 p.m. on July 3, 2024. Although the table lists the enforcement periods for this event as July 4 and the second Saturday in October, paragraph (c) of § 165.506 notes that the dates of enforcement periods are subject to change. This action is being taken to provide for the safety of life on navigable waterways during this event.

Our regulation for marine events within the Fifth Coast Guard District, § 165.506(h)(4), specifies the location of the regulated area for the Town of Swansboro Fireworks Display—July 4 Celebration fireworks display at item 15 in Table 4 to paragraph (h)(4) of § 165.506, which encompasses portions of the Atlantic Intracoastal Waterway. As reflected in § 165.506, during the enforcement period, the operator of vessels in the regulated area must comply with directions from the Captain of the Port (COTP) North Carolina or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers.

Timothy J. List,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2024–13858 Filed 6–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0563]

RIN 1625–AA00

Safety Zone; M/V DALI, Moored in the Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a portion of the Elizabeth River while the M/V DALI is moored in the Port of Virginia. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the heavily damaged M/V Dali while it offloads cargo in Norfolk, VA. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Virginia.

DATES: This rule is effective from June 21, 2024, through September 20, 2024. For the purposes of enforcement, actual notice will be used from June 21, 2024 until June 25, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–

0563 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 CDR Patrick Grizzle, Sector Virginia, Prevention Department, U.S. Coast Guard, Telephone: 757–668–5580, email: VirginiaWaterways@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

On March 26, 2024, the M/V Dali lost propulsion and allided with the Francis Scott Key Bridge in the Chesapeake Bay, near the Port of Baltimore, causing the bridge to collapse upon it. See 89 FR 24385 (April 8, 2024) for additional details about the allision. More recently, the Maryland Pilots Association, LLC has notified the Coast Guard that the M/V Dali will be transiting from the Port of Baltimore to Norfolk, VA. for repairs. It is anticipated that the vessel will arrive in Virginia waters around June 20, 2024, and that it will reach Norfolk on or about June 21, 2024, but these dates are subject to change. Given the severe damage to the vessel from the allision a 100-yard safety zone will be necessary while the vessel is moored at the Port of Virginia, in the Elizabeth River.

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 doing so would be impracticable and contrary to public interest. There is insufficient time to provide notice of a proposed rule, take and consider comments, and publish a final rule before June 21, when the rule must be in effect to provide for safety in the navigable waters around the M/V Dali as it is moored in the waters subject to this safety zone in Norfolk, Virginia.

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 dangers associated with the cargo operations on the M/V DALI and the overall damage to the vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP, Sector Virginia has determined that potential hazards associated with the M/V DALI will be a safety concern for anyone within a 100-yard radius of the vessel due to the damage sustained during the previous allision. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the M/V DALI is moored in the waters within the Port of Virginia.

IV. Discussion of the Rule

This rule establishes a safety zone from June 20, 2024, to September 20, 2024. The safety zone will cover a portion of the Elizabeth River within 100 yards of the M/V DALI while it is moored in Norfolk, VA. The dates of the safety zone were chosen to protect personnel, vessels, and the marine environment in the navigable waters of the Sector Virginia, COTP Zone while the vessel is moored at the Port of Virginia. 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 and location of the safety zone. Vessel traffic will be able to safely transit around this safety zone while the vessel is moored at the Port

of Virginia. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

Because the Coast Guard has determined that this final rule is exempt from notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action.

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 100-yard safety zone around a vessel. 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.T05–0563 to read as follows:

§ 165.T05–0563 Safety Zone; M/V DALI, Moored in the Elizabeth River, Norfolk, VA.

(a) *Location.* The following area is a safety zone: All waters of the Elizabeth River within 100 yards of the M/V Dali while it is moored in the Port of Virginia.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Virginia (COTP) in the enforcement of the safety zone.

(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 the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM Channel 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.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced while the M/V Dali is moored at the Port of Virginia between June 21, 2024 and September 20, 2024.

Dated: June 18, 2024.

J.A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Virginia.

[FR Doc. 2024–13887 Filed 6–24–24; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GN Docket No. 23–65, IB Docket No. 22–271; FCC 24–28; FR ID 226526]

Single Network Future: Supplemental Coverage From Space; Space Innovation; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: The Federal Communications Commission (Commission) is correcting a final rule that appeared in the **Federal Register** on April 30, 2024.

DATES: This correction is effective June 25, 2024.

FOR FURTHER INFORMATION CONTACT: Jon Markman, Mobility Division, Wireless Telecommunications Bureau, Jonathan.Markman@fcc.gov or (202) 418–7090, or Merissa Velez, Space Bureau Satellite Programs and Policy Division, Merissa.Velez@fcc.gov or (202) 418–0751.

SUPPLEMENTARY INFORMATION: The FCC is correcting the Table of Allocations in 47 CFR 2.106. A rule the FCC published April 30, 2024, at 89 FR 34148 contained errors in the table formatting.

List of Subjects in 47 CFR Part 2

Communications, Satellites,
Telecommunications.

Accordingly, 47 CFR part 2 is corrected by making the following correcting amendments:

**PART 2—FREQUENCY ALLOCATIONS
AND RADIO TREATY MATTERS;
GENERAL RULES AND REGULATIONS**

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. In § 2.106(a), revise pages 30, 36, 37, and 38 of the table to read as follows:

§ 2.106 Table of Frequency Allocations.

(a) * * *

BILLING CODE 6712-01-P

1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile			
5.289 5.341 1710-1930 FIXED MOBILE 5.384A 5.388A 5.388B	5.289 5.341 5.384	5.341	5.341 US88	
		1710-1761	1710-1780 FIXED MOBILE	
		5.341 US91 US378 US385		
		1701-1780 SPACE OPERATION (Earth-to-space) G42		
		US91	5.341 US91 US378 US385	
		1780-1850 FIXED MOBILE SPACE OPERATION (Earth-to-space) G42	1780-1850	
		1850-2025	1850-2000 FIXED MOBILE Mobile-satellite NC33A	RT Devices (15) Personal Communications (24) Satellite Communications (25) Wireless Communications (27) Fixed Microwave (101)
5.149 5.341 5.385 5.386 5.387 5.388 1930-1970 FIXED MOBILE 5.388A 5.388B	1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space)	1930-1970 FIXED MOBILE 5.388A 5.388B		
5.388 1970-1980 FIXED MOBILE 5.388A 5.388B	5.388	5.388		
5.388 1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389C				
2010-2025 FIXED MOBILE 5.388A 5.388B	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	2010-2025 FIXED MOBILE 5.388A 5.388B	2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25) Wireless Communications (27)
5.388 2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space)	5.388 5.389C 5.389E	5.388	2020-2025 FIXED MOBILE	
			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) FIXED MOBILE 5.391	TV Auxiliary Broadcasting (71F) Cable TV Relay (78) Local TV Transmission (101J)
5.392		5.392 US90 US92 US222 US346 US347	5.392 US90 US92 US222 US346 US347	

Table of Frequency Allocations				2110-2483.5 MHz (UHF)		Page 37	
International Table				United States Table		FCC Rule Part(s)	
Region 1 Table	Region 2 Table	Region 3 Table		Federal Table	Non-Federal Table		
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388		2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)	
2120-2170 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2120-2170 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2120-2170 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388		2120-2200 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2120-2200 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)	
2170-2200 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2170-2200 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2170-2200 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388		2170-2200 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2170-2200 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)	
2200-2290 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2200-2290 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2200-2290 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388		2200-2290 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2200-2290 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)	
2290-2300 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2290-2300 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2290-2300 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388		2290-2300 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2290-2300 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)	
2300-2450 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2300-2450 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2300-2450 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388		2300-2450 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2300-2450 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)	
2450-2483.5 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2450-2483.5 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2450-2483.5 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388		2450-2483.5 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	2450-2483.5 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)	

5.150 5.282 5.395 2450-2483.5 FIXED MOBILE Radiolocation	5.150 5.282 5.393 5.394	2310-2320 Fixed Mobile US100 Radiolocation G2	2310-2320 FIXED MOBILE BROADCASTING-SATELLITE RADIOLOCATION	Wireless Communications (27)
		US97 US327	US97 US100 US327	
		2320-2345 Fixed Radiolocation G2	2320-2345 BROADCASTING-SATELLITE	Satellite Communications (25)
		US327	US327	
		2345-2360 Fixed Mobile US100 Radiolocation G2	2345-2360 FIXED MOBILE US100 BROADCASTING-SATELLITE RADIOLOCATION	Wireless Communications (27)
		US327	US327	
		2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed	2360-2390 MOBILE US276	Aviation (87) Personal Radio (95)
		US101	US101	
		2390-2395 MOBILE US276	2390-2395 AMATEUR MOBILE US276	Aviation (87) Personal Radio (95) Amateur Radio (97)
		US101	US101	
5.150	5.150	2395-2400	2395-2400 AMATEUR	Personal Radio (95) Amateur Radio (97)
		US101 G122	US101	
		2400-2417	2400-2417 AMATEUR	RF Devices (15) ISM Equipment (18) Amateur Radio (97)
		5.150 G122	5.150 5.282	
5.150	5.150	2417-2450 Radiolocation G2	2417-2450 Amateur	
		5.150	5.150 5.282	
5.150	5.150	2450-2483.5	2450-2483.5 FIXED MOBILE Radiolocation	RF Devices (15) ISM Equipment (18) TV Auxiliary Broadcasting (74F) Private Land Mobile (90) Fixed Microwave (101)
		5.150 US41	5.150 US41	Page 38

* * * * *

Federal Communications Commission.
Marlene Dortch,
Secretary.
[FR Doc. 2024–13641 Filed 6–24–24; 8:45 am]
BILLING CODE 6712–01–C

Proposed Rules

Federal Register

Vol. 89, No. 122

Tuesday, June 25, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2024–0041]

RIN 3150–AL08

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewed Amendment No. 16

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the “List of approved spent fuel storage casks” to include Renewed Amendment No. 16 to Certificate of Compliance No. 1014. Renewed Amendment No. 16 revises the certificate of compliance to add a new overpack, include the ability to use computational fluid dynamics analysis to evaluate site-specific accident scenarios, modify the cask design, modify operational and testing requirements, and make changes to the Final Safety Analysis Report.

DATES: Submit comments by July 25, 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: Submit your comments, identified by Docket ID NRC–2024–0041, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

You can read a plain language description of this proposed rule at <https://www.regulations.gov/docket/NRC-2024-0041>. 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:

Alexandra Terres, Office of Nuclear Materials Safety and Safeguards, email: Alexandra.Terres@nrc.gov and Yen-Ju Chen, Office of Nuclear Materials Safety and Safeguards, telephone: 301–415–1018, email: Yen-Ju.Chen@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Obtaining Information and Submitting Comments
- II. Rulemaking Procedure
- III. Background
- IV. Plain Writing
- V. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0041 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–2024–0041. Address questions about NRC dockets to Helen Chang, telephone: 301–415–3228, email: Helen.Chang@nrc.gov. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- **NRC’s PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North,

11555 Rockville Pike, Rockville, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2024–004 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on September 9, 2024. However, if the NRC receives any significant adverse comment by July 25, 2024, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will

not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated

analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that “[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the Nuclear Waste Policy Act states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the

Code of Federal Regulations (10 CFR) entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241) that approved the HI-STORM 100 Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1014.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./ web link/ Federal Register citation
Amendment Request Documents	
Holtec International, Submittal of HI-STORM 100 Multipurpose Canister Storage System Amendment 16 Request, dated March 9, 2021.	ML21068A360 (package).
HI-STORM 100 Amendment 16 Responses to Requests for Supplemental Information, dated August 11, 2021	ML21223A045 (package).
HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batches 1 and 2), dated August 31, 2022.	ML22243A269 (package).
Holtec International, HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 2), dated September 9, 2022.	ML22249A347 (package).
HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 3), dated October 3, 2022.	ML22276A286 (package).
Holtec International, HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 4), dated January 4, 2023.	ML23005A000 (package).
Holtec International, HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 4)—Additional Supporting Document, dated January 5, 2023.	ML23005A273 (package).
Holtec International, HI-STORM 100 Amendment 16 Responses to Requests for Additional Information (Batch 5), dated January 13, 2023.	ML23013A337 (package).
HI-STORM 100 Amendment 16 RAI 3–3 Clarification, dated March 17, 2023	ML23076A271 (package).
HI-STORM 100 Amendment 16 Responses to Second Round Requests for Additional Information, dated September 20, 2023.	ML23263B122 (package).
Holtec International—HI-STORM 100 Multipurpose Canister Storage System Amendment 19, dated February 17, 2022.	ML22048C222.
Technical Specifications	
Proposed Certificate of Compliance No. 1014, Amendment 16	ML23123A104.
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1014, Amendment 16	ML23123A105.
Proposed Technical Specifications, Appendix B, Certificate of Compliance No. 1014, Amendment 16	ML23123A106.
Proposed Technical Specifications, Appendix C, Certificate of Compliance No. 1014, Amendment 16	ML23123A107.
Proposed Technical Specifications, Appendix D, Certificate of Compliance No. 1014, Amendment 16	ML23123A108.
Proposed Technical Specifications, Appendix A–100U, Certificate of Compliance No. 1014, Amendment 16	ML23123A109.

Document	ADAMS accession No./ web link/ Federal Register citation
Proposed Technical Specifications, Appendix B–100U, Certificate of Compliance No. 1014, Amendment 16	ML23123A110.
Preliminary Safety Evaluation Report	
Preliminary Certificate of Compliance 1014 Amendment 16 Safety Evaluation Report	ML23123A112.
Additional Documents	
Final Rule, “Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites,” published July 18, 1990.	55 FR 29181.
Final Rule, “List of Approved Spent Fuel Storage Casks: Holtec HI–STORM 100 Addition,” published May 1, 2000	65 FR 25241.
Revision to Policy Statement, “Agreement State Program Policy Statement; Correction,” published October 18, 2017.	82 FR 48535.
Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998	63 FR 31885.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC–2024–0041. In addition, the Federal rulemaking website allows members of the public to

receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2024–0041); (2) click the “Subscribe” link; and (3) enter an email address and click on the “Subscribe” link.

Dated: June 7, 2024.

For the Nuclear Regulatory Commission.

Raymond Furstenau,

Acting Executive Director for Operations.

[FR Doc. 2024–13734 Filed 6–24–24; 8:45 am]

BILLING CODE 7590–01–P

Notices

Federal Register

Vol. 89, No. 122

Tuesday, June 25, 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

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Nutrition and Foods for Special Dietary Uses

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on September 3, 2024. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 44th Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU44) of the Codex Alimentarius Commission (CAC), which will convene in Dresden, Germany, from October 2–6, 2024. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 44th Session of the CCNFSDU and to address items on the agenda.

DATES: The public meeting is scheduled for September 3, 2024, from 1:00–4:00 p.m. Eastern Time.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 44th Session of the CCNFSDU will be accessible via the internet at the following address: <https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCNFSDU&session=44>.

Dr. Douglas Balentine, U.S. Delegate to the 44th Session of the CCNFSDU, invites interested U.S. parties to submit their comments electronically to the following email address: douglas.balentine@fda.hhs.gov.

Registration: Attendees may register to attend the public meeting here: <https://www.zoomgov.com/meeting/register/vJltceuoqz4oHyMYdr-E7FAlhAe9uJbwt7w>. After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 44th Session of the CCNFSDU, contact U.S. Delegate, Dr. Douglas Balentine, Senior Science Advisor, International Nutrition Policy, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, by phone at (240) 672–7292 or email at douglas.balentine@fda.hhs.gov. For an additional information about the public meeting, contact the U.S. Codex Office by email at uscodex@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) are:

(a) To study specific nutritional problems assigned to it by the Commission and advise the Commission on general nutrition issues;

(b) To draft general provisions, as appropriate, concerning the nutritional aspects of all foods;

(c) To develop standards, guidelines, or related texts for foods for special dietary uses, in cooperation with other committees where necessary;

(d) To consider, amend if necessary, and endorse provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines, and related texts.

The CCNFSDU is hosted by Germany. The United States attends the CCNFSDU as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the Agenda for the 44th Session of the CCNFSDU

will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and/or its subsidiary bodies
- Matters arising from FAO and WHO
- Nutrient Reference Values—Requirements (NRVs-R) for persons aged 6–36 months
- General principles for the establishment of NRVs-R for persons aged 6–36 months
- Technological justification for several food additives
- Prioritization mechanism/emerging issues or new work proposals
- Guideline for the preliminary assessment to identify and prioritize new work for CCNFSDU
- Proposals for new work/emerging issues (replies to CL 2024/52–NFSDU)
- Discussion paper on harmonized probiotic guidelines for use in foods and food supplements
- Review of texts under the purview of CCNFSDU
- Discussion paper on the use of fructans, beta-carotene, lycopene in *Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants* (CXS 72–1981)
- Discussion paper on methods of assessing the sweetness of carbohydrate sources in the *Standard for Follow-up Formula* (CXS 156–1987)
- Other business and future work

Public Meeting

At the September 3, 2024, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Douglas Balentine, U.S. Delegate to the 44th Session of the CCNFSDU, at douglas.balentine@fda.hhs.gov. Written comments should state that they relate to activities of the 44th Session of the CCNFSDU.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: <http://www.usda.gov/codex>, a link that

also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at <https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer>, or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email. Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410; Fax: (202) 690-7442; Email: program.intake@usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Done at Washington, DC, on June 18, 2024.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2024-13850 Filed 6-24-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket Number FSIS-2022-0032]

Availability of Guidance for Residue Prevention

AGENCY: Food Safety and Inspection Service (FSIS), Department of Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: FSIS is announcing the availability of its updated guideline for the prevention of violative residues in meat and poultry slaughter establishments.

DATES: Comments on the guideline must be received on or before August 26, 2024.

ADDRESSES: A downloadable version of the revised compliance guide is available to view and print at <https://www.fsis.usda.gov/inspection/compliance-guidance>.

FSIS invites interested persons to submit comments on this document. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- **Mail:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250-3700.

- **Hand- or Courier-Delivered Submittals:** Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350-E, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2022-0032. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call 202-720-5046 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT:

Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, FSIS, USDA; Telephone: (202) 205-0495.

SUPPLEMENTARY INFORMATION: The U.S. National Residue Program (NRP) is administered by FSIS to collect data on chemical residues in domestic and imported meat, poultry, and egg products and to keep products that are adulterated because of illegal residues out of commerce. FSIS collects samples of meat, poultry, and egg products at egg products plants, official establishments and official import inspection establishments and analyzes the samples at FSIS laboratories for chemical residues of veterinary drugs, pesticides, and environmental contaminants. Through this testing, FSIS verifies that establishments maintain adequate residue control in

their Hazard Analysis and Critical Control Point (HACCP) systems. As part of the HACCP regulation under 9 CFR part 417, establishments are required to conduct a hazard analysis and to consider the food safety hazards that are reasonably likely to occur, including drug and other chemical residues.

FSIS is announcing that it has revised its *FSIS Guideline for Residue Prevention*, which was last issued on May 29, 2013 (78 FR 32235). The guideline is intended to help establishments meet FSIS requirements regarding violative residue prevention. FSIS updated the guideline in response to frequent askFSIS questions. FSIS also revised the guideline to provide updates based on up-to-date science, incorporate new information on purchase specifications and documentation that can be used to support that violative residues are not reasonably likely to occur and provide guidance for establishments that perform residue testing. Additionally, FSIS updated the guideline to clarify how residues influence New Swine Inspection System sorting procedures and FSIS Kidney Inhibition Swab (KISTM) testing procedures. Furthermore, FSIS made changes to the guideline to improve its readability. The updated guideline is available at: <https://www.fsis.usda.gov/inspection/compliance-guidance>.

This guideline represents FSIS' current thinking on residue prevention and should be considered usable as of the date of its issuance. The information in the guideline is provided to assist meat and poultry establishments in meeting regulatory requirements. The contents of the guideline do not have the force and effect of law and are not meant to bind the public in any way. The guideline is intended only to provide clarity to industry regarding existing requirements under the regulations.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>. FSIS also will make copies of this publication available through the *FSIS Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page,

FSIS provides information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form, which can be obtained online at <https://www.usda.gov/forms/electronic-forms>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400

Independence Avenue SW, Washington, DC 20250-9410;

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2024-13842 Filed 6-24-24; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Six Rivers National Forest within Del Norte County, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on July 10, 2024, 6 p.m. to 8 p.m., and July 11, 2024, 6 p.m. to 8 p.m., Pacific standard time.

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. Pacific standard time on July 5, 2024. Written public comments will be accepted by 11:59 p.m. Pacific standard time on July 5, 2024.

Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person at the Gasquet Ranger District Office, located at 10600 Highway 199 in

Gasquet, California 95543. Committee information and meeting details can be found on the advisory committee's web page at www.fs.usda.gov/detail/srnf/workingtogether/advisorycommittees/?cid=fseprd935605 or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to paul.senyszyn@usda.gov or via mail (postmarked) to Six Rivers National Forest, Gasquet Ranger District, Attn: RAC Coordinator, 10600 Highway 199, Gasquet, California 95543. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. Pacific standard time, July 5, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to paul.senyszyn@usda.gov or via mail (postmarked) to Six Rivers National Forest, Gasquet Ranger District, Attn: RAC Coordinator, 10600 Highway 199, Gasquet, California 95543.

FOR FURTHER INFORMATION CONTACT: Kathy Allen, Designated Federal Officer, by phone at 707-457-3131 or email at kathy.m.allen@usda.gov or Ben Littlefield, RAC Coordinator at 707-298-5116 or email at benjamin.littlefield@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from title II project proponents and discuss title II project proposals;
2. Make funding recommendations on title II projects.

The agenda will include time for individuals to make oral comments of three minutes or less. To be scheduled on the agenda, individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are

a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at 202-720-2600 (voice and TTY) or USDA through the Federal Relay Service at 800-877-8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 7, 2024.
Cikena Reid,
USDA Committee Management Officer.
[FR Doc. 2024-12879 Filed 6-24-24; 8:45 am]
BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

[Docket No. RUS-24-AGENCY-0010]

OneRD Annual Notice of Guarantee Fee Rates, Periodic Retention Fee Rates, Loan Guarantee Percentage and Fee for Issuance of the Loan Note Guarantee Prior to Construction Completion for Fiscal Year 2025

AGENCY: Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS), Rural Housing Service (RHS), and the Rural Utilities Service (RUS), agencies of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter collectively referred to as the Agency, offer loan guarantees through four programs: Community Facilities (CF) administered by the RHS; Water and Waste Disposal (WWD) administered by the RUS; and Business and Industry (B&I) and Rural Energy for America Program (REAP) administered by the RBCS. This notice provides applicants with the Guarantee Fee rates, Guarantee percentage for Guaranteed

Loans, the Periodic Retention Fee, and Fee for Issuance of the Loan Note Guarantee Prior to Construction Completion for Fiscal Year (FY) 2025. These fees are to be used when applying for loan note guarantees under the guaranteed loan types listed above during FY2025. This notice is being published prior to the passage of a FY 2025 appropriation. Should the fees need to be adjusted after passage of the FY 2025 appropriations, the agency will publish a subsequent notice in the **Federal Register**.

DATES: The fees in this notice are effective October 1, 2024.

FOR FURTHER INFORMATION CONTACT: For information specific to this notice contact Susan Woolard, Special Projects Coordinator, Rural Development Innovation Center—Regulations Management, USDA, 1400 Independence Avenue SW, Washington, DC 20250-1522. Telephone: (202) 720-9631 (This is not a toll-free number). Email: susan.woolard@usda.gov. For information regarding implementation, contact your respective Rural Development State Office listed at rd.usda.gov/browse-state.

SUPPLEMENTARY INFORMATION: As set forth in 7 CFR part 5001, the Agency is authorized to charge a guarantee fee, a periodic guarantee retention fee, a fee for the issuance of the loan note guarantee prior to construction completion and establish a loan guarantee percentage for guaranteed loans made under this rule. Pursuant to this and other applicable authority, and subject to the current appropriated authority, the Agency is establishing the following for FY 2025:

Loan type	Guarantee fee (%)	Periodic guarantee retention fee (%)	Loan guarantee percentage	Fee for issuance of loan note guarantee prior to construction completion (%)
B&I	3.00	0.55	80	0.50
B&I Reduced Fee	1.0	0.50	80	0.50
B&I project in a high cost, isolated rural area of the State of Alaska that is not connected to a road system	1.0	0.50	90	0.50
CF	1.25	0.50	80	0.50
REAP	1.0	0.25	80	0.50
WWD	1.0	N/A	90	0.50

The initial guarantee fee is paid at the time the loan note guarantee is issued. The periodic guarantee retention fee is paid by the lender to the Agency once a year. Payment of the periodic guarantee retention fee is required in

order to maintain the enforceability of the guarantee. The fee for issuance of the loan note guarantee prior to construction completion DOES NOT apply to all construction loans. This additional fee only applies to loans

requesting to receive a loan note guarantee prior to project completion. For loans where the loan note guarantee is issued between October 1 and December 31, the first periodic retention fee payment is due January 31 of the

second year following the date the loan note guarantee was issued.

As set forth in 7 CFR 5001.454(d), each fiscal year, the Agency shall establish a limit on the maximum portion of B&I guarantee authority available for that fiscal year that may be used to guarantee loans with a reduced guarantee fee. The Agency has established that not more than 12 percent of the Agency's B&I guarantee authority will be reserved for loan guarantee requests with a reduced fee. Once this limit is reached, all additional loans will be at the standard fee.

Unless precluded by a subsequent FY 2025 appropriation, these rates will apply to all guaranteed loans obligated in FY 2025. The amount of the periodic retention fee on each guaranteed loan will be determined by multiplying the periodic retention fee rate by the outstanding principal loan balance as of December 31, multiplied by the percentage of guarantee.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA Programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA through the 711 Relay Service. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, a complainant should complete a Form, AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/sites/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the

alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Basil I. Gooden,

Under Secretary, Rural Development.

[FR Doc. 2024-13895 Filed 6-24-24; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-011]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of the Countervailing Duty Administrative Review; Notice of Amended Final Results

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

SUMMARY: On March 21, 2024, the U.S. Court of International Trade (the Court) issued its final judgment in *Trina Solar (Changzhou) Science & Technology Co., Ltd., et al. v. United States*, Court No. 23-00219 (CIT March 21, 2024), sustaining the U.S. Department of Commerce's (Commerce) final remand results pertaining to the countervailing duty administrative review on certain crystalline silicon photovoltaic products (solar products) from the People's Republic of China (China), covering the period of review (POR) January 1, 2021, through December 31, 2021. Commerce is notifying the public that the Court's final judgment is not in harmony with the final results of the administrative review, and that Commerce is amending its final results.

DATES: Applicable March 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3586.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2023, Commerce published its final results of the 2021 administrative review of solar products from China.¹ Commerce reached an affirmative determination for Trina Solar (Changzhou) Science & Technology Co., Ltd. and its cross-owned affiliates (collectively, Trina Solar). In the *Final Results*, Commerce exclusively relied on freight rates published by The Descartes Systems Group Inc. (Descartes) when determining ocean freight rates for calculating the subsidy rates for several programs pursuant to which the Government of China provided goods for less than adequate remuneration (LTAR).² Trina Solar filed a complaint concerning this issue.

Subsequently, and considering the Court's holding in *Risen Energy I* and *Risen Energy II*,³ Commerce requested that the issue be remanded for further consideration. On December 12, 2023, the Court granted Commerce's motion for voluntary remand with additional guidance.⁴ Specifically, the Court instructed Commerce to consider its rulings in *Risen Energy I* and *Risen Energy II* and to use a multiple route database in keeping with the statutory preference for relying on a broadly based ocean freight rate, in the absence of "the ability to concretely explain a strong reason for a single rate source."⁵ Upon reconsideration of this issue, Commerce determined not to rely on the Descartes database for the base rates for ocean freight in constructing world market benchmarks for LTAR programs under 19 CFR 351.511(a)(2)(ii). Instead, Commerce relied on ocean freight rates published by Xeneta AS (Xeneta) exclusively for the base ocean freight rates and then made certain adjustments to the Xeneta data to account for any missing ocean freight surcharges, relying on the Descartes data.⁶ On

¹ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2021, 88 FR 62770 (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² *Id.* at Comment 5.

³ See *Risen Energy Co., v. United States*, 570 F. Supp. 3d 1369, 1372 (CIT 2022) (*Risen Energy I*); see also *Risen Energy Co. v. United States*, Slip Op. 23-48 (CIT April 11, 2023) (*Risen Energy II*).

⁴ See *Trina Solar (Changzhou) Science & Technology Co., Ltd. v. United States*, Court No. 23-00219, Slip Op. No. 23-174 (CIT December 12, 2023).

⁵ *Id.*

⁶ See *Trina Solar (Changzhou) Science & Technology Co., Ltd. v. United States*, Court No. 23-00219, "Final Results of Redetermination Pursuant

February 22, 2024, Commerce issued its final results of redetermination calculating an estimated countervailable subsidy rate of 9.02 percent *ad valorem* for Trina Solar,⁷ and on March 21, 2024, the Court sustained Commerce's *Final Redetermination*.⁸

Timken Notice

In its decision in *Timken*,⁹ as clarified by *Diamond Sawblades*,¹⁰ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's March 21, 2024, judgment constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Trina Solar's countervailable subsidy rate for the period January 1, 2021, through December 31, 2021, as follows:

Producer/exporter	Subsidy rate (percent <i>ad valorem</i>)
Trina Solar (Changzhou) Science & Technology Co., Ltd. ¹¹	9.02

Cash Deposit Requirements

Commerce intends to issue revised cash deposit instructions to U.S.

to Court Order," dated February 22, 2024 (*Final Redetermination*).

⁷ *Id.*

⁸ See *Trina Solar (Changzhou) Science & Technology Co., Ltd., et al., v. United States*, Court No. 23–00219 (CIT March 21, 2024).

⁹ See *Timken Co., v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁰ See *Diamond Sawblades Mfrs. Coal. v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹¹ Commerce found Trina Solar (Changzhou) Science & Technology Co., Ltd. to be cross-owned, within the meaning of 19 CFR 351.525(b)(6)(vi), among and across the following companies: Yancheng Trina Solar Guoneng Science & Technology Co., Ltd.; Trina Solar (Su Qian) Technology Co., Ltd.; Trina Solar Yiwu Technology Co., Ltd.; Trina Solar Co., Ltd.; Trina Solar (Yancheng Dafeng) Co., Ltd.; Trina Solar Science & Technology (Yancheng) Co., Ltd.; Trina Solar (Suqian) Optoelectronics Co., Ltd.; Trina Solar (Changzhou) Optoelectronic Device Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; Trina Solar (Hefei) Science and Technology Co., Ltd.; Changzhou Hesai PV

Customs and Border Protection (CBP) for the entries indicated above. The revised cash deposit rate, indicated above, will be effective March 31, 2024.

Liquidation of Suspended Entries

Commerce intends to instruct CBP to assess countervailing duties on unliquidated entries of subject merchandise produced and/or exported by Trina Solar in accordance with 19 CFR 351.212(b). We will instruct CBP to assess countervailing duties on all appropriate entries covered by this administrative review where the *ad valorem* rate is not zero or *de minimis*. Where an *ad valorem* subsidy rate is zero or *de minimis*,¹² we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties.

Notification to Interested Parties

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

Dated: June 18, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–13841 Filed 6–24–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) has conducted a new shipper review of Co May Import-Export Company Limited (Co May) regarding the antidumping duty order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam). The period of review (POR) is August 1, 2022, through January 31, 2023. Based on our analysis, Commerce finds that Co May did not make sales of subject merchandise at prices below normal value during the POR.

DATES: Applicable June 25, 2024.

Ribbon Materials Co., Ltd.; Changzhou Hewei New Material Technology Co., Ltd.; Changzhou Trina Hezhong PV Co., Ltd.; and Changzhou Trina PV Ribbon Materials Co., Ltd. See *Final Results*.

¹² See 19 CFR 351.106(c)(2).

FOR FURTHER INFORMATION CONTACT:

Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2024, Commerce published the *Preliminary Results* of this new shipper review and invited interested parties to comment.¹ On April 5, 2024, Commerce extended the deadline for issuance of these final results to June 14, 2024.² On May 17, 2024, the petitioners³ submitted a case brief.⁴ On May 22, 2024, Co May submitted a rebuttal brief.⁵ On May 30, 2024, Commerce held a public hearing.⁶ For a complete description of the events that occurred subsequent to the *Preliminary Results*, see the Issues and Decision Memorandum.⁷

Scope of the Order⁸

The products covered by the *Order* are fish fillets from Vietnam. For a complete description of the scope of this order, see the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed by interested parties in the Issues and Decision Memorandum. A list of the

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of New Shipper Review; 2022–2023*, 89 FR 5862 (January 30, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Extension of Deadline for Final Results of Antidumping Duty New Shipper Review," dated April 5, 2024.

³ The petitioners are the Catfish Farmers of America and individual U.S. catfish processors America's Catch, Inc., Alabama Catfish, LLC d/b/a Harvest Select Catfish, Inc., Consolidated Catfish Companies, LLC d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Guidry's Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc.

⁴ See Petitioners' Letter, "Case Brief," dated May 17, 2024.

⁵ See Co May's Letter, "Rebuttal Brief of Co May Import Export Company Limited," dated May 22, 2024.

⁶ See Hearing Transcript, "Public Hearing in the Matter of: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, New Shipper Review," dated May 30, 2024.

⁷ See Memorandum, "Decision Memorandum for the Final Results of the New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁸ See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) (*Order*).

issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Verification

From April 1 through 4, 2024, Commerce verified the questionnaire responses of Co May in Vietnam.⁹ We used standard verification procedures, including an examination of relevant sales and accounting records, and original source documents provided by Co May.

Changes Since the Preliminary Results

Based on a review of the record, as well as our verification procedures, Commerce made certain changes to the margin calculations for Co May.¹⁰

Final Results of Review

The estimated weighted-average dumping margin for the final results of this new shipper review is as follows:

Exporter	Weighted-average dumping margin (dollars per kilogram)
Co May Import-Export Company Limited	\$0.00

Disclosure

We intend to disclose the calculations performed for the final results of this review to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), because Co May's

weighted-average dumping margin is zero, we will instruct CBP to liquidate Co May's entry without regard to antidumping duties. Pursuant to Commerce's assessment practice,¹¹ for entries of Co May's merchandise that were not reported in the U.S. sales data submitted by Co May during this review, Commerce will instruct CBP to liquidate such entries at the Vietnam-wide entity rate.

Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) for subject merchandise produced and exported by Co May, no cash deposit will be required; (2) for subject merchandise exported by Co May, but not produced by Co May, the cash deposit rate will be the rate for the Vietnam-wide entity; and (3) for subject merchandise produced by Co May, but not exported by Co May, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative

protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.214.

Dated: June 14, 2024.
Ryan Majerus,
Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

- List of Topics Discussed in the Issues and Decision Memorandum**
- I. Summary
 - II. Background
 - III. Scope of the Order
 - IV. Changes Since the *Preliminary Results*
 - V. Discussion of the Issue
 - Comment 1: *Bona Fide* Nature of Co May's Sale
 - VI. Recommendation
- [FR Doc. 2024–13856 Filed 6–24–24; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; SABIT Participant Application, Participant Surveys, Alumni Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested

⁹ See Memorandum, "Verification of the Questionnaire Responses of Co May Import-Export Company Limited in the New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam," dated May 8, 2024.
¹⁰ For a full description of these changes, see Issues and Decision Memorandum.
¹¹ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

via the **Federal Register** on April 16, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: International Trade Administration, Commerce.

Title: SABIT Participant Application, Participant Surveys, Alumni Survey.

OMB Control Number: 0625–0225.

Form Number(s): ITA–4143P–3.

Type of Review: Regular submission (revision of a currently approved information collection).

Number of Respondents: 3,050.

Average Hours per Response: Participant application, 3 hours; participant pre-program survey, 6 minutes; participant post-program survey, 6 minutes; alumni survey, 1 hour.

Burden Hours: 6,655.

Needs and Uses: The SABIT Program of the Department of Commerce's International Trade Administration (ITA), is a key element in the U.S. Government's efforts to support the economic transition of Eurasia (the former Soviet Union) and to support economic growth in other regions of the world, including countries in Europe, South Asia, and the Middle East, et al. SABIT develops and implements two-week training programs in the United States for groups of up to 20 business and government professionals from Eurasia and other regions. These professionals meet with U.S.

government agencies, non-governmental organizations and private sector companies in order to learn about various business practices and principles. This unique private sector-U.S. Government partnership was created in order to tap into the U.S. private sector's expertise and to assist developing regions in their transition to market-based economies while simultaneously boosting trade between the United States and other countries. SABIT also develops and implements virtual events for its alumni and other participants that provide industry-specific training on best practices for business and management and fosters contacts with U.S. organizations.

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: Each form is filled out once per respondent.

Estimated Total Annual Cost to Public: \$120,318.

Respondent's Obligation: Voluntary.

Legal Authority: Section 632(a) of the Foreign Assistance Act of 1961, as amended (the "FAA"), and pursuant to the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub.

L. 115–141); Foreign Aid and Transparency and Accountability Act of 2016.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website 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 and entering either the title of the collection or the OMB Control Number 0625–0225.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–13920 Filed 6–24–24; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

Harvard University et al.; Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before (Insert date 20 days after publication in the **Federal Register**). Address written comments to Statutory Import Programs Staff, Room 41006, U.S. Department of Commerce, Washington, DC 20230. Please also email a copy of those comments to Dianne.Hanshaw@trade.gov.

Docket Number: 24–013. Applicant: Harvard University, 17 Oxford Street, Jefferson 158, Cambridge, MA 02138. Instrument: Narrow linewidth single frequency fiber laser. Manufacturer: Shanghai Precilaser Technology, Co., Ltd., China. Intended Use: The instrument is intended to be used for the high power (15 W), single frequency laser system at 828.5 nm will be used in a quantum physics experiment at

Harvard for optical tweezer trapping of rubidium-87 atoms. The available laser power will allow many more of these atoms (thousands) to be controlled than previously demonstrated (hundreds). This will allow the study of larger quantum systems with properties and fidelities far exceeding smaller systems. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: May 8, 2024.

Docket Number: 24–014. Applicant: Drexel University, Rm-MS 3701, Market Street, RM 470, Central Receiving, 34th & Ludlow Streets, Philadelphia, PA 19104.

Instrument: Battery fabrication equipment. Manufacturer: Xiamen TOB New Energy. Intended Use: The instrument is intended to be used to understand how battery electrodes are made, how to improve their processing, and how to make higher performance rechargeable batteries. The battery materials include oxides, and carbons and the phenomena is battery electrode microstructure and performance. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 9, 2024.

Docket Number: 24–015. Applicant: Harvard University, 17 Oxford Street, Jefferson 158, Cambridge, MA 02138. Instrument: Narrow Linewidth Laser. Manufacturer: Shanghai Precilaser Technology, Co., Ltd., China. Intended Use: The high power (15 W), narrow-linewidth/single frequency laser system at 852 nm will be used in a quantum physics experiment at Harvard for optical tweezer trapping of rubidium-87 atoms. Narrow-linewidth operation of the laser is critical to the method of optical tweezer generation we use to trap atoms, and we need as much power as possible to perform experiments on the largest possible quantum systems. The wavelength of 852 nm is important because it is sufficiently far detuned from the atomic transition to provide long qubit coherence time. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 29, 2024.

Docket Number: 24–016. Applicant: Cornell University, 377 Pine Tree Rd., Ithaca, NY 14850.

Instrument: Closed-cycle cryostat sample manipulator for ultra-low

temperature angle-resolved photoemission spectroscopy & electron energy loss spectroscopy. Manufacturer: Fermion Instrument, China. Intended Use: The instrument is intended to be used to conduct two different types of experiments: angle-resolved photoemission spectroscopy (ARPES) and electron energy-loss spectroscopy (EELS). ARPES is a technique which allows us to measure directly the momentum-resolved single-particle electronic structure of materials. EELS is a technique which allows us to measure the energy-resolved collective excitations in materials (such as lattice vibrations, plasmons, etc.). We currently have an electron detector that is, in principle, compatible with both techniques. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 2, 2024.

Dated: June 20, 2024.

Gregory W. Campbell,

Director, Subsidies and Economic Analysis, Enforcement and Compliance.

[FR Doc. 2024-13919 Filed 6-24-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE014]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferndale Refinery Dock Maintenance and Pile Replacement Activities in Ferndale, Washington

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Phillips 66 Co. (Phillips 66) for authorization to take marine mammals incidental to Ferndale Refinery Dock Maintenance and Pile Replacement Activities in Ferndale, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting

comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 25, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.Gatzke@noaa.gov. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jennifer Gatzke, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are

proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On February 29, 2024 we received a request from Phillips 66 for an IHA to take marine mammals incidental to Ferndale Refinery Dock Maintenance and Pile Replacement Activities in Ferndale, Washington. Following NMFS’ review of the application, Phillips 66 submitted revised versions on May 16 and May 20, 2024. The

application was deemed adequate and complete on May 21, 2024. Phillips 66 has requested authorization of take by Level B harassment for harbor seal, California sea lion, Steller sea lion and harbor porpoise. Neither Phillips 66 nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Phillips 66 is proposing to modernize the existing timber loading dock and replace it with a stronger structure that meets current industry best practices. The activity includes installation of steel piles by vibratory driving, and pile removal using an underwater chainsaw or cutting torch.

In-water pile installation construction would occur for 35 days, which would occur intermittently between approximately August 1, 2024 and October 31, 2024. Take of marine mammals is anticipated to occur due to vibratory pile installation. Removal of all piles is expected to take up to 66

days for underwater pile cutting with a chainsaw. Take of marine mammals is not anticipated to occur due to pile removal.

Dates and Duration

This IHA would be valid for 1 year from the date of issuance. Due to in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, all planned in-water construction in this area is limited to a work window beginning August 1 and ending February 1. However, since the Strait of Georgia is a very large water body with a long fetch, calm in-water work conditions are typically only available from August to the end of October. Pile removal processes are less dependent on good weather, and this portion of the project may occur from approximately August 1 to February 1. Therefore, Phillips 66 expects that in-water pile installation construction work will occur from August 1, 2024 to October 31, 2024. Pile driving is anticipated to take up to 35 days to complete. Work may occur on nonconsecutive days due to weather

and other project needs. Pile driving would be completed intermittently throughout daylight hours.

Specific Geographic Region

Phillips 66 maintains and operates a marine dock on the southeastern shoreline of the Strait of Georgia in Ferndale, Washington as shown in figure 1. The Strait of Georgia encompasses the northern marine waters of the Salish Sea, with a long fetch that extends to the northwest between the Canadian mainland and Vancouver Island. The dock is built on aquatic lands leased from the Washington Department of Natural Resources (WDNR), with the lease boundary shown in figure 2. The shoreline and aquatic area surrounding the dock is part of the Cherry Point Aquatic Reserve, a WDNR protected marine environment. The shore area is characterized by wave washed feeder bluffs where sediment transport creates both sandy and cobbled beaches and intertidal zones.

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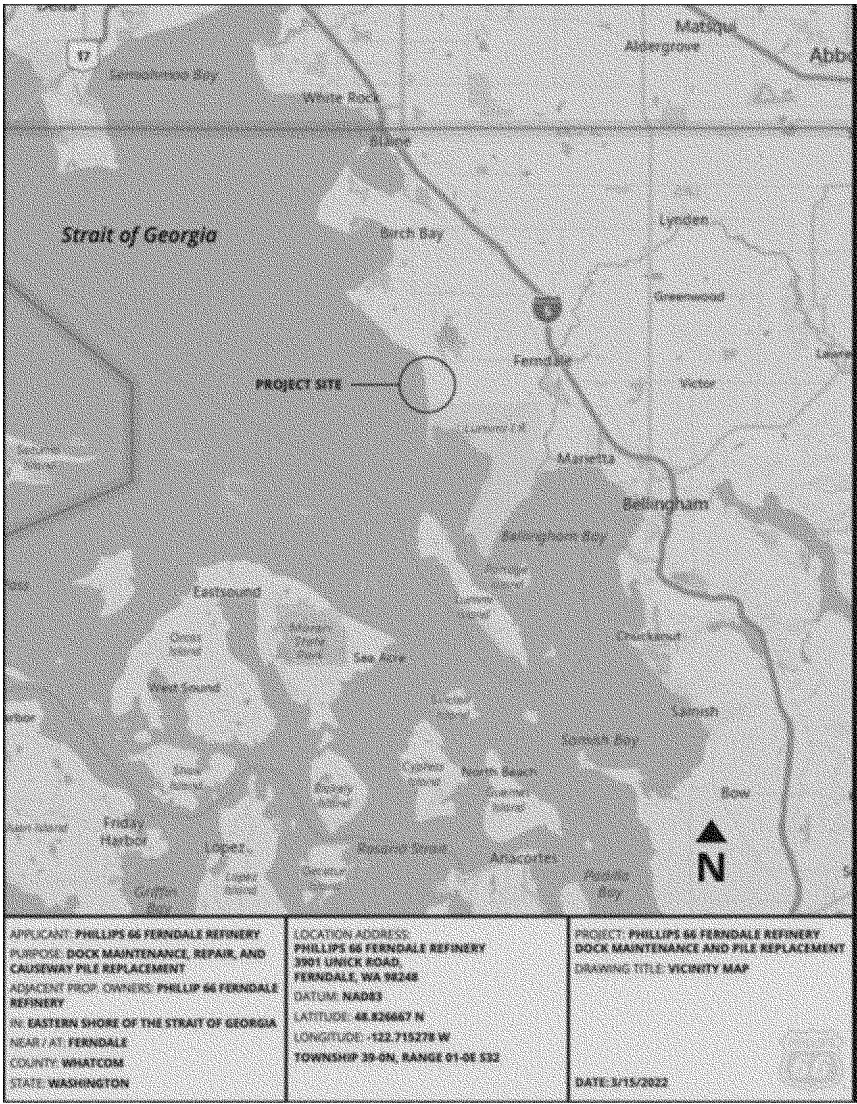


Figure 1—Vicinity Map Showing the Strait of Georgia in the Northeast Puget Sound, WA

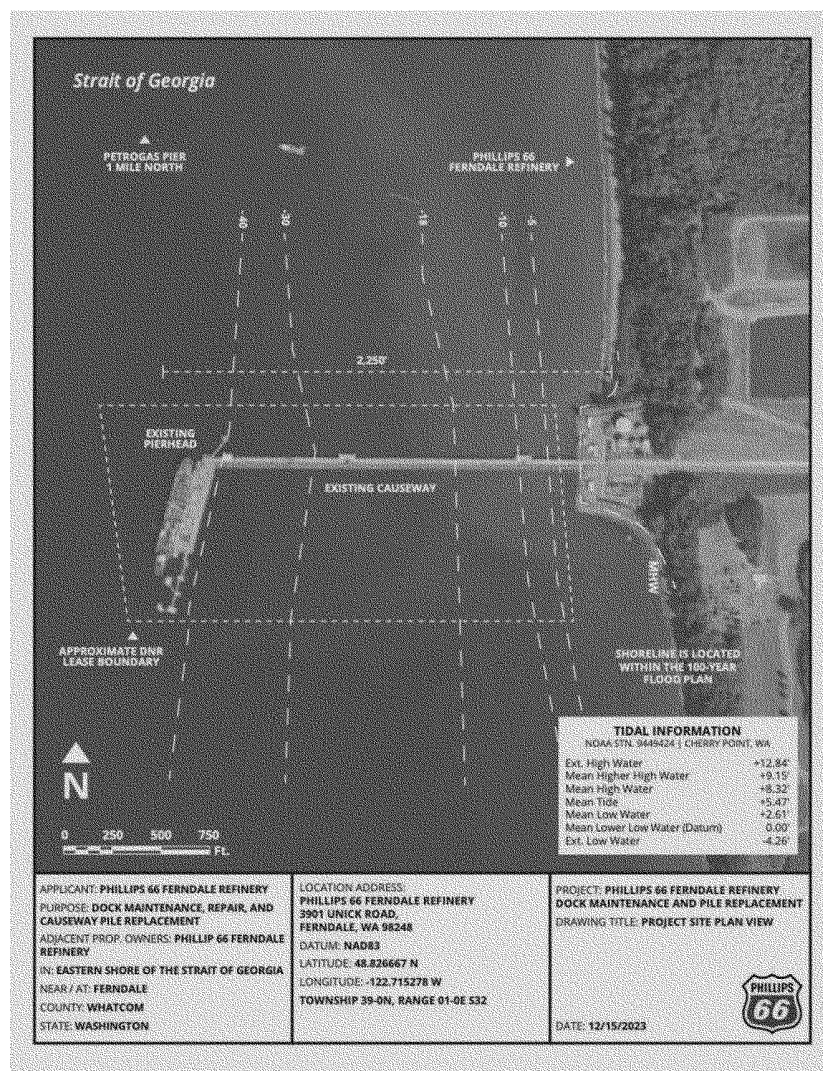


Figure 2—Project Location Showing the WDNR Lease Boundary in Ferndale, WA

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Detailed Description of the Specified Activity

The first phase of in-water construction activity consists of the vibratory installation of 116 steel piles of 20 inch diameter. Piles will be driven to approximately 40 ft (12.19 m) of penetration into the sea floor. Pile driving time is estimated to take 15 minutes per pile. Pile driving will take 35 days and pile driving time is not expected to exceed 4 hours in any 24-hour period.

The next project phase is the removal of the old timber and steel pilings. Note that Phillips 66 is proposing to install the new steel piles before removing the old timber and steel ones in order to minimize facility downtime. Phillips 66 has determined that there is limited access for pile removal via vibratory or direct pull methods due to the location of the piles under the causeway. It may be necessary to utilize a variety of pile removal methods to safely complete this work. The existing 12-inch steel and creosote-treated timber piles (677 in total) will be cut below the mudline with an underwater chainsaw or cutting torch. Underwater chainsaw average underwater SPL (Sound Pressure Level) of 140 dB RMS. However, as noted

above, this activity is not expected to cause incidental take of marine mammals as it produces relatively low source levels of noise that is similar to numerous other noise sources at a heavily used industrial marine environment. A cutting torch is not anticipated to generate significant noise. The removed piles will be lifted to a barge for proper disposal. Note that NMFS has determined that use of an underwater chainsaw or cutting torch is not expected to result in take and, therefore, these activities will not be discussed further.

A summary of the proposed pile installation and removal methods for the dock project is presented below in table 1.

TABLE 1—SUMMARY OF IN-WATER PILE REMOVAL AND INSTALLATION AT PHILLIPS 66 DOCK

Pile type and size	Activity	Removal/install method	Number of piles	Total days of in-water work	Approximate piles per day	Hours pile driver in use per day
20-inch steel pipe pile 12-inch timber and steel pipes	Install Removal	Vibratory hammer Underwater chainsaw and cutting torch.	116 677	Up to 35 Up to 66	16 NA	4 NA

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about

these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which exposure is expected for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here

as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' Alaska and Pacific SARs. All values presented in table 2 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>).

TABLE 2—SPECIES FOR WHICH TAKE COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI3 ³
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
<i>Family Balaenopteridae (rorquals):</i>						
Humpback Whale	<i>Megaptera novaeangliae</i>	Central America/Southern Mexico—CA/OR/WA.	E, D, Y	1,494 (0.171, 1,284, 2021)	3.5	14.9
Humpback Whale	<i>Megaptera novaeangliae</i>	Mainland Mexico—CA/OR/WA	T, D, Y	3,477 (0.101, 3,185, 2018)	43	22
Humpback Whale	<i>Megaptera novaeangliae</i>	Hawaii	-, -, N	11,278 (0.56, 7,265, 2020)	127	27.09
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i>						
Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific South- ern Resident.	E, D, Y	73 (N/A, 73, 2022)	0.13	0
Killer Whale	<i>Orcinus orca</i>	West Coast Transient	-, -, N	349 (N/A, 349, 2018)	3.5	0.4
<i>Family Phocoenidae (por- poises):</i>						
Harbor porpoise	<i>Phocoena phocoena</i>	Washington Inland Waters	-, -, N	11,233 (0.37, 8,308, 2015)	66	≥7.2
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i>						
California Sea Lion	<i>Zalophus californianus</i>	U.S.	-, -; N	257,606 (N/A, 233,515, 2014)	14,011	>321
Steller Sea Lion	<i>Eumetopias jubatus</i>	Eastern	-, -; N	36,308 (N/A, 36,308, 2022) ...	2,178	93.2
<i>Family Phocidae (earless seals):</i>						

TABLE 2—SPECIES FOR WHICH TAKE COULD OCCUR IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance sur- vey) ²	PBR	Annual M/SI ³
Harbor Seal	<i>Phoca vitulina</i>	Washington Northern Inland Waters.	- , - , N	16,451 (0.07, 15,462, 2019) ..	928	40

¹ Information on the classification of marine mammal species follows The Society for Marine Mammalogy's Committee on Taxonomy (<https://www.marinemammal.science.org/science-and-publications/list-marine-mammal-species-subspecies/>). ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

All species that could potentially occur in the proposed project area are included in table 2 of the IHA application. While the gray whale, minke whale, Dall's porpoise, and the Eastern North Pacific Northern Resident stock of killer whale have been reported in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. The gray whale is uncommon in the area, but may pass through the Puget Sound during migration. Per the population analysis on gray whales from 1996–2015, from June 1 to November 30, there were only 6 days when sightings were recorded in the Northern Puget Sound. The Northern Puget Sound refers to a study range of the Puget Sound marine waters from Edmonds, WA to the Canadian border (Calambokidis, 2017). Additionally, gray whales would not be migrating when in-water work would most likely occur for this project (i.e., August through October). Therefore, since the occurrence of the gray whale is low at any time of year, and no gray whales are expected to occur during the expected work period, take of this species is not expected. While the minke whale may be observed in the San Juan Islands and southern Puget Sound, reports of minke whales in the Southeastern Strait of Georgia are rare. The Dall's porpoise has historically been present in the Puget Sound, but their numbers have declined significantly and are now also considered to be rare (Evenson 2016, Jefferson *et al.*, 2016, Jefferson 2024). Finally, while the Eastern North Pacific Northern Resident stock of killer whale may occur infrequently in Washington, its primary range is located in British Columbia, Canada, and Southeast Alaska (Dahlheim *et al.*, 1997, Ford *et al.*, 2000), and no take of this stock is expected to occur.

Humpback Whale

Humpback whales are found in coastal waters of Washington as they migrate from feeding grounds in Alaska to California to winter breeding grounds in Central America and Mexico or Hawaii. Humpbacks used to be considered only rare visitors to Puget Sound. In 1976 and 1978, two sightings were reported in Puget Sound and one sighting was reported in 1986 (Osborne *et al.*, 1988; Calambokidis and Steiger 1990; Calambokidis and Baird 1994). Humpback whale occurrence in Puget Sound has been steadily increasing since 2000, with some individuals remaining in the area through the winter (Calambokidis *et al.*, 2018).

On September 8, 2016, NMFS divided the once single species into 14 distinct population segments (DPS) under the ESA, removed the species-level listing as endangered, and, in its place, listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. There are four DPSs in the North Pacific, including Western North Pacific and Central America, which are listed as endangered, Mexico, which is listed as threatened, and Hawaii, which is not listed.

The 2022 Pacific SARs described a revised stock structure for humpback whales which modifies the previous stocks designated under the MMPA to align more closely with the ESA-designated DPSs (Caretta *et al.*, 2023; Young *et al.*, 2023). Specifically, the three previous North Pacific humpback whale stocks (Central and Western North Pacific stocks and a CA/OR/WA stock) were replaced by five stocks, largely corresponding with the ESA-designated DPSs. These include Western North Pacific and Hawaii stocks and a Central America/Southern Mexico-CA/OR/WA stock (which corresponds with the Central America DPS). The remaining two stocks, corresponding with the Mexico DPS, are

the Mainland Mexico-CA/OR/WA and Mexico-North Pacific stocks (Caretta *et al.*, 2023; Young *et al.*, 2023). The former stock is expected to occur along the west coast from California to southern British Columbia, while the latter stock may occur across the Pacific, from northern British Columbia through the Gulf of Alaska and Aleutian Islands/Bering Sea region to Russia.

Within U.S. west coast waters, three current DPSs may occur: The Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). According to Wade *et al.* (2021), the probability that whales encountered in Washington waters are from a given DPS are as follows: Hawaii, 69 percent; Mexico (CA–OR–WA), 25 percent; Central America, 6 percent.

Humpback whales, while relatively few in number, are regularly seen in the Puget Sound. They are most frequently found in the South Puget Sound, the Strait of Juan De Fuca, the Haro Strait and among the Canadian Gulf Islands. They are found in transit in the southern parts of the Strait of Georgia on occasion, but are not a common occurrence per the sightings archive of the Orca Network (<https://www.orcanetwork.org/recent-sightings>, accessed June 2024).

Killer Whale

There are three distinct ecotypes, or forms, of killer whales recognized in the north Pacific: resident, transient, and offshore. The three ecotypes differ morphologically, ecologically, behaviorally, and genetically. Resident killer whales exclusively prey upon fish, with a clear preference for salmon (Ford and Ellis 2006; Hanson *et al.*, 2010; Ford *et al.*, 2016), while transient killer whales exclusively prey upon marine mammals (Caretta *et al.*, 2019). Less is known about offshore killer whales, but they are believed to consume primarily fish, including several species of shark (Dahlheim *et al.*, 2008). The seasonal movements of

transients are largely unpredictable, although there is a tendency to investigate harbor seal haulouts off Vancouver Island more frequently during the pupping season in August and September (Baird 1994; Ford 2014). Transient killer whales have been observed in central Puget Sound in all months (Orca Network 2021).

Southern Resident killer whales (SRKW) are typically found in the Salish Sea in spring, summer and fall, and are found along the west coast of the United States and British Columbia in the winter (NOAA, 2022). The J pod tends to stay closer to the Puget Sound even during winter. The orca pods travel about the Puget Sound swiftly and, though a rare occurrence, the pods may pass through in the project area. On March 28, 2024, the J pod was sighted in the Strait of Georgia, about 23 miles west of the project area near Mayne Island (Orca Network, June 2024). ESA summer core area critical habitat for SRKW has been designated in Puget Sound, which includes all U.S. marine waters in Whatcom County, WA, where Ferndale Dock is located (50 CFR 226; August 2, 2021).

Harbor Porpoise

Harbor porpoise occur along the U.S. west coast from southern California to the Bering Sea (Carretta *et al.*, 2020). The Washington Inland Waters stock is found from Cape Flattery throughout Puget Sound and the Salish Sea region. In southern Puget Sound, harbor porpoise were common in the 1940s, but marine mammal surveys, stranding records since the early 1970s, and harbor porpoise surveys in the early 1990's indicated that harbor porpoise abundance had declined (Carretta *et al.*, 2020). Annual winter aerial surveys conducted by the Washington Department of Fish and Wildlife from 1995 to 2015 revealed an increasing trend in harbor porpoise in Washington inland waters, including the return of harbor porpoise to Puget Sound (Carretta *et al.*, 2020). Seasonal surveys conducted in spring, summer, and fall 2013–2015 in Puget Sound and Hood Canal documented substantial numbers of harbor porpoise in Puget Sound. Observed porpoise numbers were twice as high in spring as in fall or summer, indicating a seasonal shift in distribution.

Harbor porpoise reside in the Puget Sound year-round. Data from harbor porpoise sightings indicate that distribution is heterogeneous with some areas consistently suggesting higher densities of harbor porpoise. The British Columbia Cetacean Sightings Network (BCCSN) reports summer concentrations

in areas that include the South-Central Strait of Georgia (Canadian side), Haro Strait, Boundary Pass and sites further north in British Columbia. Winter concentrations include the Port of San Juan, Haro Strait, Swanson Channel, and the central Strait of Georgia (in British Columbia) (Zier, 2015).

California Sea Lion

California sea lions occur from Vancouver Island, British Columbia, to the southern tip of Baja California. They breed on the offshore islands of southern and central California from May through July (Heath and Perrin, 2008). During the non-breeding season, adult and subadult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.*, 1993). They return south the following spring (Heath and Perrin 2008, Lowry and Forney, 2005). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.*, 1990; Melin *et al.*, 2008).

California sea lions regularly occur on rocks, buoys and other structures, and are the most frequently sighted otariid found in Washington waters. Some 3,000 to 5,000 animals are estimated to move into Pacific Northwest waters of Washington and British Columbia during the fall (September) and remain until the late spring (May) when most return to breeding rookeries in California and Mexico (Jeffries *et al.*, 2000). Peak counts of over 1,000 animals have been made in Puget Sound (Jeffries *et al.*, 2000).

There are no known haulouts in close proximity to the proposed project area but California sea lions may be in the vicinity foraging as they move through the wider area. While California sea lions can be found throughout the Puget Sound, estimates place the number of California sea lions in the springtime at an average of 450 in the Puget Sound proper (Jefferson, *et al.*, 2023). There are two documented haulouts in the southern Strait of Georgia, both along the western coast of the Strait of Georgia in British Columbia, Canada. The closest haulout is near Tumbo Island on the eastern edge of the Gulf Islands, over 15 miles from the project site (LeValley, E., 2021).

Steller Sea Lion

Steller sea lions in the project area are expected to be from the Eastern U.S. stock. The Eastern U.S. stock of Steller sea lions is found along the coasts of southeast Alaska to northern California where they occur at rookeries and numerous haulout locations along the

coastline (Jeffries *et al.*, 2000; Scordino, 2006; NMFS, 2013).

In Washington waters, numbers decline during the summer months, which correspond to the breeding season at Oregon and British Columbia rookeries (approximately late May to early June) and peak during the fall and winter month.

The majority of Steller sea lion population in Washington is found on the west coast but there are consistently used haulouts and breeding sites throughout the Puget Sound. These sites are typically rocky, gravel or sand beaches, ledges and reefs. There are two documented haulouts in the southern Strait of Georgia. The first is near Tumbo Island on the eastern edge of the Gulf Islands in British Columbia, Canada, (west coast of the Strait of Georgia), approximately 15 miles from the project area. The second is on Sucia Island (LeValley, E. 2021), approximately 10 miles distant from the project area, at the southern end of the Strait of Georgia.

Harbor Seal

Harbor seals are the most common, widely distributed marine mammal found in Washington marine waters and are frequently observed in the nearshore marine environment. They occur year-round and breed in Washington. They are frequently found in saltwater bays, estuaries and inlets. Their preferred haulouts include intertidal and subtidal rocks, beaches, sandbars, rocky reefs, log booms and floats.

There are 3 delineated stocks in the Puget Sound. These stocks include the Hood Canal stock, the Northern Inland Waters stock and the Southern Puget Sound stock.

This project is only likely to affect the Northern Inland Waters Stock, which is the most wide-spread stock throughout the Puget Sound, from Cape Flattery, to the Strait of Georgia, to the Tacoma Narrows Bridge (NOAA, 2022). Haulouts may be just a few individuals but may range beyond 500 individuals. Harbor seals generally live and feed in a limited range but may travel up to 400 miles for seasonal prey. The Strait of Georgia is a very large body of water with no haulouts in the immediate vicinity of the project. The closest documented haulouts are two different low population (>100 individuals) locations approximately 5 miles from the project site, one to the north and one to the south (Jeffries *et al.*, 2000). To the southwest and west of the project location are 14 other haulouts dotted throughout a few of the small northern San Juan Islands (North of Orcas Island)

within 10 miles of the project (Jeffries *et al.*, 2000).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities

(*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018)

described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS
(NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a

given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile driving, and vibratory pile removal. The sounds produced by these activities are considered non-impulsive. Impulsive sounds (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (*e.g.*, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Southall *et al.*, 2007).

Only one type of pile hammer would be used on this project: vibratory. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson, *et al.*, 2005).

The likely or possible impacts of activity proposed by Phillips 66 on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature.

Auditory Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving is the primary means by which marine mammals may be harassed from the Phillips 66 specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and behavioral effects, ranging in magnitude from none to severe (Southall *et al.*, 2007, 2021). Exposure to pile driving noise has the potential to result in auditory threshold shifts (TS) and behavioral reactions (e.g., avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (e.g., impulsive vs. non-impulsive), the species, age and sex class (e.g., adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (TSs) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an increase, in the

threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (e.g., impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (i.e., spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (i.e., how animal uses sound within the frequency band of the signal; e.g., Kastelein *et al.*, 2014), and the overlap between the animal and the source (e.g., spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (Ward *et al.*, 1958, 1959; Ward, 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.*, 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an

accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaticaorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (i.e., mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and table 5 in NMFS (2018).

Installing piles for this project requires vibratory pile driving. For the project, there would likely be pauses in

activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines, and is considered unlikely for this project.

Behavioral harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005, Southall *et al.*, 2021).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (e.g., Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007, 2021; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within exposures of an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012, Southall *et al.*, 2021), and can vary depending on characteristics associated with the sound source (e.g., whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound

than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. For a review of studies involving marine mammal behavioral responses to sound, see Southall *et al.*, 2007; Gomez *et al.*, 2016; and Southall *et al.*, 2021 reviews.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic

sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ferndale Dock services barges, tanker ships, and other vessels. Approximately 3,000 ships travel through the Strait of Georgia to visit Vancouver. Therefore, background sound levels in the project area are likely already elevated.

Marine Mammal Habitat Effects

The proposed Phillips 66 construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water SPLs and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During pile driving, elevated levels of underwater noise would ensonify waters around the dock, where both fish and mammals may occur, and could affect foraging success.

In-water pile driving and pile removal would also cause short-term effects on water quality due to increased turbidity. Local currents are anticipated to disburse suspended sediments produced by project activities at moderate to rapid rates, depending on tidal stage. Phillips 66 would employ standard construction best management practices, thereby reducing any impacts. Considering the nature and duration of the effects, combined with the measures to reduce turbidity, the impact from increased turbidity levels is expected to be discountable.

Pile installation may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. Phillips 66 must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot (ft) radius around the pile (Everitt *et al.*, 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds would likely be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving at the project site would not obstruct movements or migration of marine mammals.

Effects on Prey

Construction activities would produce continuous (*i.e.*, vibratory pile driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels may cause noticeable changes in behavior (Pearson *et al.*, 1992; Skalski *et al.*, 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. Since only continuous vibratory piling will be used in this project, impacts are expected to be less.

Impacts on marine mammal prey (*i.e.*, fish or invertebrates) of the immediate area due to the acoustic disturbance are possible. The duration of fish or invertebrate avoidance or other disruption of behavioral patterns in this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Further, significantly large areas of fish and marine mammal foraging habitat are available in the nearby waters.

The duration of the construction activities is relatively short, with pile driving activities expected to take only 35 days. There will be no more than a total of 4 hours vibratory driving per day and pile driving activities would be restricted to daylight hours. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect fish in the project area. Increased turbidity is expected to occur in the immediate vicinity of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates, any effects on fish are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area.

In summary, given the relatively short daily duration of sound associated with individual pile driving and events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, as use of the acoustic stressors (*i.e.*, pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine

mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB (re 1 μ Pa) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the

potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The Phillips 66 proposed activity includes the use of continuous sound

sources (vibratory driving), and therefore the RMS SPL threshold of 120 dB re 1 μ Pa is applicable.

These thresholds are provided in the table 4 below. The references, analysis, and methodology used in the development of the thresholds are

described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset Acoustic Thresholds * (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and TL coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, vibratory pile driving). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source ($20 * \log[\text{range}]$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the

source ($10 * \log[\text{range}]$). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level B harassment sound thresholds for the method and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory pile installation of 20-in steel piles. Source levels for the pile size and driving method are presented in table 5. The closest representative pile size for reference sound levels was 24-inch piles (WSDOT 2020).

TABLE 5—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Equipment used	Noise level			Distance from measurement
	dB Peak	dB rms	dB SEL	
Vibratory pile driving 24-inch steel piles ¹	181	153	.....	10 m

¹ Caltrans 2020.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions

included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory pile

driving and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used for impact driving in the optional NMFS User Spreadsheet tool, and the resulting estimated isopleths, are reported below in tables 6 and table 7 below.

TABLE 6—USER SPREADSHEET INPUTS FOR LEVEL A HARASSMENT ISOPLETHS

Inputs	20-in steel vibratory installation
Spreadsheet Tab Used	Vibratory Pile Driving (Stationary: non-impulsive, Continuous)
Source Level (Single Strike/shot SEL) .....	.....
Peak .....	.....
RMS	153
Weighting Factor Adjustment (kHz)	2.5
Strikes per pile .....	.....
Piles per day	16
Propagation (xLogR)	15
Duration	15
Distance of source level measurement (meters) + ...	10

TABLE 7—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS (m) AND ENSONIFIED AREAS
[km² in Parentheses]

Pile size/type	Level A pinnipeds		Level A cetaceans			Level B
	Harbor seal	Sea lions	LF	MF	HF	
Vibratory Installation						120 dB threshold.
20-in steel	3.1 (.003)	<1 (.000)	5 (.005)	<1 (.000)	7.5 (.007)	1585 (1.5)

* The Level A harassment isopleths associated with vibratory installation are all below the minimum shutdown zone and result in very small ensonified areas. Therefore they are not provided in this table but will be included in the following calculated take tables.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. The primary source for density estimates is from the Navy Marine Species Density Database

(NMSDD) Phase III for the Northwest Training and Testing Study Area (Navy, 2019). These density estimates are shown in table 8 and will be used to calculate take due to the lack of site-specific data that is available.

To quantitatively assess potential exposure of marine mammals to noise levels from pile driving over the NMFS

threshold guidance, the following equation was first used to provide an estimate of potential exposures within estimated harassment zones:

Exposure estimate = N × harassment zone (km²) × maximum days of pile driving where

N = density estimate (animals per km²) used for each species.

TABLE 8—MARINE MAMMAL SPECIES DENSITIES USED FOR EXPOSURE CALCULATIONS

Species	Region characterized	Density (animals/km ²)
Humpback Whale	North Puget Sound/San Juan Islands (Fall and Winter)	0.0027
Killer Whale (Southern Resident)	North Puget Sound/San Juan Islands (Fall and Winter)	0.0078
Killer Whale (Transient)	North Puget Sound/San Juan Islands (Fall and Winter)	0.0031
Harbor Porpoise	North Puget Sound	2.16
Steller Sea Lion	North Puget Sound/San Juan Islands (Fall)	0.0027
California Sea Lion	North Puget Sound/San Juan Islands (Fall)	0.0179
Harbor Seal	North Puget Sound/San Juan Islands (Fall)	0.76

Source: Navy 2019.

Potential Level A harassment zones were all calculated to less than 10 meters. As seen from table 7, marine mammals will have to be very close to the vibratory driving activity to be within the estimated Level A harassment zone. Marine mammal monitors will be in place, closely monitoring this zone and stopping work before any marine mammal gets near the

largest Level A harassment zone of 6.2m from the project source. Based on the estimated Level A harassment zones, and density-based calculations for all species, no take by Level A Harassment was estimated (all less than 1.0). Harbor porpoise is the species with the highest density at 2.16 per km, multiplied by the Level A harassment zone of .007 km (table 7), and 35 days of work yields

0.53 individuals exposed to Level A harassment. Therefore, when considered in context of planned mitigation, no take by Level A harassment is expected. Table 9 below shows the total calculated take by Level B harassment over the 35 in-water work days proposed for the Phillips 66 activity resulting in total calculated take.

TABLE 9—CALCULATED AND REQUESTED TAKE BY LEVEL B HARASSMENT FROM VIBRATORY PILE INSTALLATION

35 Days of 20-inch pile installation by vibratory hammer		
Species	Total level B harassment calculated	Level B harassment proposed for authorization
Harbor Porpoise	447	447
Steller Sea Lion	1	35
California Sea Lion	4	105
Harbor Seal	157	157

Humpback Whale

Humpback whales are an uncommon occurrence near the project area but they do have the potential to be in the area as they migrate to feeding grounds to the north and mating grounds far south. Based on best available density estimates, Phillips 66 has calculated the potential take of one humpback whale, by Level B harassment only. However, Phillips 66 proposes to shut down whenever humpback whales approach the Level B harassment zone. Given the low density of humpback whales in the project area, the ability to detect the whales visually from a considerable distance, the capacity to track whales through the Orca Network, and the anticipated efficacy of proposed mitigation and monitoring measures, Phillips 66 determined that no take of humpback whales is likely to occur and did not request that any such take be authorized. NMFS concurs with this request and, therefore, is not proposing to authorize take of humpback whales.

Killer Whales

Both SRKW and transient killer whales could potentially occur near the project area. Based on best available density estimates, Phillips 66 has calculated that up to two SRKWs and one transient whale could be taken, by Level B harassment only. Even though the project site is located in summer core area critical habitat, and the project may begin August 1, the southeastern corner of the Strait of Georgia (where the project is located) is not a location where SRKW are commonly sighted. According to the monthly ORCA network reports of September through October, from 2016–2023, the

occurrence of killer whales from any stock was uncommon in the southeastern corner of the Strait of Georgia. When compared to transient killer whales, sightings of SRKWs were far less prevalent (ORCA 2024). Mitigation requires that pile driving activity shut down whenever a killer whale from any stock is observed approaching a harassment zone. Given the ability to visually detect killer whales from proposed PSO locations (including boats), the capacity to track this species through contact with the ORCA Network, and the expected efficacy of proposed mitigation and monitoring measures, Phillips 66 elected to not request take. Due to the expansive range of SRKWs; the relatively small area of their habitat that may be affected by the proposed project; the ready availability of habitat of similar or higher value, and the short-term nature of installation construction (35 days), Phillips 66 determined that no take of killer whales is likely to occur and did not request that any such take be authorized. NMFS concurs with this request and, therefore, is not proposing to authorize take of killer whales.

Steller Sea Lion

Calculated take based upon the species density in the Strait of Georgia yielded one potential take by Level B harassment during the 35 days of in-water pile driving work. While there are no known nearby haulouts, there are haulouts in the greater Strait of Georgia. Phillips 66 determined, based on anecdotal sightings at the facility, that the calculated value was too low. In addition, this species is known to travel significant distances in search for prey,

possibly into the surrounding marine waters of the Cherry Point Aquatic Reserve.

NMFS reviewed other IHA monitoring reports from Puget Sound and found that the Seattle Pier 63 construction project (87 FR 31985, May 26, 2022) reported a maximum of one animal present per day over 17 in-water work days between October 12 and November 30, 2022. Therefore, NMFS assumes a similar rate of occurrence and is proposing to authorize 35 (one/day) takes of Steller sea lion by Level B harassment.

California Sea Lion

Calculated take based upon the species density in the Strait of Georgia found 4 potential takes by Level B harassment during the 35 days of pile driving work at the Phillips 66 dock. While there are no known nearby haulouts, there are haulouts in the greater Strait of Georgia. Phillips 66 determined, based on anecdotal sightings at the facility, that the calculated value was too low. In addition, this species is known to travel significant distances in search for prey, possibly into the surrounding marine waters of the Cherry Point Aquatic Reserve.

NMFS reviewed other IHA monitoring reports from Puget Sound and found that the Seattle Pier 63 construction project (87 FR 31985, May 26, 2022) reported a maximum of three California sea lions present per day over 17 in-water work days between October 12 and November 30, 2022. Therefore, NMFS assumes a similar rate of occurrence and is proposing to authorize 105 (three/day) takes of

California sea lions by Level B Harassment.

Details of proposed takes by Level B harassment as a percentage of stocks are shown in table 10.

TABLE 10—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL B HARASSMENT BY SPECIES, STOCK, AND PERCENT OF TAKE BY STOCK

Common name	Stock	Stock abundance	Total proposed take	Proposed take as percentage of stock
Harbor porpoise	Washington Inland Waters	11,233	447	3.97
Steller sea lion	Eastern U.S	36,308	35	0.10
California sea lion	U.S	257,606	105	0.04
Harbor seal	Washington Northern Inland	16,451	157	0.95

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or

stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

Pre-start Clearance Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start (discussed below) cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the monitoring zone has been observed for 30 minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue. Pre-

start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones, indicated in table 11, are clear of marine mammals. Pile driving may commence following 30 minutes of observation, when the determination is made that the shutdown zones are clear of marine mammals. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone would commence.

Implementation of Shutdown Zones—For all pile driving activities, Phillips 66 would implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns would be used to avoid takes by Level A harassment from vibratory pile driving for all four species for which take may occur.

A minimum shutdown zone of 10 m would be required for all in-water construction activities to avoid physical interaction with marine mammals. Proposed shutdown and monitoring zones for each activity type are shown in table 11.

TABLE 11—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL (m)

Pile size/type	Shutdown zones			Level B harassment monitoring zone
	HF	Phocid	Otariid	
20-in steel Vibratory	10	10	10	1,585

All marine mammals would be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If one of the four species of marine mammal for which take would be authorized enters the Level B harassment zone, in-water activities would continue and

PSOs would document the animal's presence within the estimated harassment zone.

If a species for which authorization has not been granted, or a species which has been granted but the authorized takes are met, is observed approaching or within the Level B harassment zone,

pile driving activities will be shut down immediately. Activities will not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed with no sighting of the animal.

Coordination With Local Marine Mammal Research Network—Prior to the start of pile driving for the day the

PSOs would contact the Orca Network to find out the location of the nearest sightings of any killer whales or humpback whales. Phillips 66 must delay or halt pile driving activities if any killer whales or humpback whales are sighted within the vicinity of the project area and are approaching the Level B harassment zones (table 11) during in-water activities. Finally, if a SRKW, unidentified killer whale, or humpback whale enters the Level B harassment zone undetected, in-water pile driving must be suspended immediately upon detection and must not resume until the animal exits the Level B harassment zone or 15 minutes have passed without re-detection of the animal.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the

activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A minimum of two PSOs would be on duty during all in-water pile driving activities. One 'shore-based' observer will be stationed at locations offering best line of sight views to monitor the entirety of the shutdown zones and provide the most complete coverage of the monitoring zones. Additionally, Phillips 66 proposes to deploy one boat-based PSO that will be positioned at a

location or moving in a pattern that offers the most complete visual coverage of the monitoring zone. Note, however, PSO position(s) may vary based on construction activity and location of piles or equipment.

PSOs would scan the waters using binoculars and would use a handheld range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring would be conducted by qualified observers, who would be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator via a radio. Phillips 66 would adhere to the following observer qualifications:

1. PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.

2. At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

3. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

4. Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

5. PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of

marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and,

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring,
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method, and the total equipment duration or total number of minutes for each pile (vibratory driving),
- PSO locations during marine mammal monitoring,
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance,
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); Animal's closest point of approach and estimated time spent within the harassment zone; and Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding

or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching),

- Number of marine mammals detected within the harassment zone, by species,
- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, Phillips 66 would immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Region regional stranding coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.*, Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Phillips 66 to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Phillips 66 would not be able to resume their activities until notified by NMFS.

In the event that Phillips 66 discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition as described in the next paragraph), Phillips 66 would immediately report the incident to the Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov),

NMFS and to the West Coast Region regional stranding coordinator as soon as feasible. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Phillips 66 to determine whether modifications in the activities are appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 9, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in zones ensounded above the thresholds for Level B harassment identified above when these activities are underway.

Take by Level B harassment would be due to potential behavioral disturbance, and TTS. No serious injury or mortality is anticipated or proposed for authorization given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Based on reports in the literature as well as monitoring from other similar activities, behavioral disturbance (*i.e.*, Level B harassment) would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely for pile driving, individuals would simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Washington, which have taken place with no observed severe responses of any individuals or known long-term adverse consequences. The impact of Level B harassment takes on the affected individuals would be minimized through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. The project site itself is frequented by large tankers every few days, but the majority of sound fields produced by the specified activities are relatively close to the dock. Animals disturbed by project sound would be expected to avoid the area and use nearby higher-quality habitats.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify

existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the intermittent driving schedule (35 in-water work days between August 1 and October 31, 2024); short duration of the activities (no more than 4 hours per day vibratory driving); the relatively small area of the habitat that may be affected; and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

While there are haulouts for pinnipeds in the area, these locations are some distance from the actual project site. There are two documented California sea lion haulouts in the southern Strait of Georgia, both on the western coast of the Strait in British Columbia. The closest haulout is near Tumbo Island on the eastern edge of the Gulf Island, over 15 miles from the project site. The closest documented Steller sea lion haulout location is over 10 miles from the project site, on Sucia Island (Jeffries *et al.*, 2000). The closest documented harbor seal haulouts are two different low population (≤ 100 individuals) locations approximately 5 miles from the project site, one to the north and one to the south (Jeffries *et al.*, 2000). To the southwest and west of the project location are 14 other haulouts dotted throughout a few of the small northern San Juan Islands (North of Orcas Island) within 10 miles of the project (Jeffries *et al.*, 2000).

While repeated exposures of individuals to this pile driving activity could cause limited Level B harassment in harbor seals, harbor porpoises, and sea lions, they are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The ensounded area from the project is very small relative to the overall

habitat ranges of all species and stocks, and no habitat of particular importance would be impacted;

- Repeated exposures of marine mammals to this pile driving activity could cause Level B harassment in seals, harbor porpoise and sea lion species, but are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stocks as a whole; and

- The proposed mitigation measures are expected to reduce the effects of the specified activity by minimizing the intensity and/or duration of harassment events.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 8 demonstrates the number of instances in which individuals of a given species could be exposed to received noise levels that could cause take of marine mammals. Our analysis shows that the total taking proposed for authorization is less than 4 percent of the best available population abundance estimate for all species.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small

numbers of marine mammals would be taken, relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Phillips 66 for conducting in-water pile driving activities at the Phillips 66 Ferndale Refinery Dock in Ferndale Washington from August 1, 2024 through July 31, 2025, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction activities. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA),

- The request for renewal must include the following:

1. An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take), and

2. A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized, and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 18, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2024-13818 Filed 6-24-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Evaluation of Public Visitors' Experience at the National Marine Sanctuaries Visitor Centers and Exhibits

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 26, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at NOAA.PRA@noaa.gov. Please reference OMB Control Number 0648-0582 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Dr. Giselle Samonte, Economist, NOAA Office of National Marine Sanctuaries, 1305 East West Highway, SSMC4, 10th Floor, Silver Spring, MD 20910; (301) 427-8606 or email address: Giselle.Samonte@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of National Marine Sanctuaries (ONMS) is requesting revision and extension of a currently approved information collection. The evaluation of visitor demographics, experiences, and opinions about visitor centers and exhibits is needed to support the conservation, education, and management goals of ONMS to strengthen and improve the

stewardship, sustainable use, and protection of natural, cultural, and historical resources. Under the jurisdiction of ONMS and to satisfy legal mandates, the National Oceanic and Atmospheric Administration (NOAA) is authorized to conduct evaluations, such as this information collection, under section 314(c) of the American Innovation and Competitiveness Act to ensure education programs have measurable objectives and milestones as well as clear, documented metrics for evaluating its programs.

For example, the Mokuāpapa Discovery Center (Center) is an outreach arm of Papahānaumokuākea Marine National Monument that reaches more than 75,000 people each year in Hilo, Hawai'i. The Center was created almost two decades ago to help raise support for the creation of a national marine sanctuary in the Northwestern Hawaiian Islands. Since that time, the area has been proclaimed a marine national monument and the main messages we are trying to share with the public have changed to better reflect the new monument status, UNESCO World Heritage status, and the joint management by the three co-trustees of the monument.

ONMS recently updated its Strategic Plan and has identified a lack of information on the effectiveness of its education, outreach, and communications initiatives as they relate to sanctuary/monument visitor centers, exhibits (permanent or traveling/temporary), kiosks, and educational programming conducted by its visitor centers and partner facilities.

We therefore are conducting an optional exit survey to determine if people visiting ONMS' visitor centers and exhibits are receiving our new messages. ONMS is requesting to conduct a survey to evaluate patron acuity to determine successful concept attainment. Conducting thorough evaluations will aid in vital decisions regarding exhibit renovation, new exhibits, interpretation programs, and educational content.

II. Method of Collection

Information collection is voluntary via completion of an ONMS Visitor Center and Exhibit Survey provided at the ONMS and Partner Outreach Facilities.

III. Data

OMB Control Number: 0648–0582.

Form Number(s): None.

Type of Review: Regular (extension of current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 8,750.

Estimated Time per Response: Center Survey: 8 minutes; Visitor and Exhibit Survey: 12 minutes.

Estimated Total Annual Burden Hours: 1,734.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Voluntary.

Legal Authority: National Marine Sanctuary Act.

IV. Request for Comments

We are soliciting public comments to permit ONMS to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department of Commerce, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Undersecretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–13383 Filed 6–24–24; 8:45 am]

BILLING CODE 3510–NK–P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No: CFPB–2024–0025]

Privacy Act of 1974; System of Records

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Consumer Financial Protection Bureau (CFPB) proposes to modify Privacy Act System of Records “CFPB.027—Emergency Notification System.” This modified system will collect contact information from current employees and contractors of CFPB to be used in the event of an emergency. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

DATES: Comments must be received no later than July 25, 2024. The modified system of records will be effective August 5, 2024 unless the comments received results in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and docket number (see above Docket No. CFPB–2024–0025), by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* privacy@cfpb.gov. Include Docket No. CFPB–2024–0025 in the subject line of the email.

- *Mail/Hand Delivery/Courier:* Kathryn Fong, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at CFPB is subject to delay, commenters are encouraged to submit comments electronically.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <https://www.regulations.gov>. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Kathryn Fong, Chief Privacy Officer, (202) 435–7084. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to this email box.

SUPPLEMENTARY INFORMATION: The CFPB is modifying its Privacy Act System of Records Notice (SORN) “CFPB.027—Emergency Notification System” to

update the “Categories of Records in the System” and “Record Source Categories” sections to note that due to the transition to a hybrid working environment, collection of personal contact information from individuals covered by the system is no longer voluntary as previously indicated. While the type and amount of personal contact information collected remains the same, the personal contact information is now automatically collected from an authoritative human resource system. The CFPB has also updated the “Policies and Practices for Retention and Disposal of Records” section to include a National Archives and Records Administration (NARA) approved schedule applicable to the records maintained in the system. Additionally, the “Routine Uses” section has been updated to include sharing with NARA for purposes of inspection, in accordance with applicable law. Furthermore, CFPB is making non-substantive revisions to the “Policies and Practices for Storage of Records” to eliminate duplication of the “Administrative, Technical and Physical Safeguards” section and throughout the SORN to align with the Office of Management and Budget’s recommended model in Circular A–108, appendix II.

The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to OMB Circular A–108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act” (Dec. 2016),¹ and the Privacy Act of 1974, 5 U.S.C. 552a(r).

SYSTEM NAME AND NUMBER:

CFPB.027—Emergency Notification System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Physical Security Program Manager, Administrative Operations, Operations, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, title X, sections 1012 and 1013, codified at 12 U.S.C. 5492, 5493.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to maintain emergency contact information for CFPB personnel. The system provides for high-speed message delivery that reaches all CFPB personnel in response to threat alerts issued by the Department of Homeland Security and/or local emergency officials regarding weather related emergencies, or other critical situations that disrupt the operations and accessibility of a worksite. The system also enables CFPB, emergency responders, and others to account for CFPB personnel during an emergency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include but are not limited to: (1) Current CFPB employees and (2) Individuals authorized to perform or use services provided in CFPB facilities including contractors, consultants, detailees, and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system include but are not limited to the following information: name, organization/office of assignment, and business and personal contact information, including address, phone number, and email address.

RECORD SOURCE CATEGORIES:

Information in this system is automatically collected from an authoritative human resource system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, and consistent with the CFPB’s Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, all or a portion of the records or information contained in this system may be disclosed outside of the CFPB as a routine use to:

(1) Appropriate agencies, entities, and persons when (a) the CFPB suspects or has confirmed that there has been a breach of the system of records; (b) the

CFPB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the CFPB (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB’s efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the CFPB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access, amendment, or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person’s behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) The U.S. Department of Justice (DOJ) for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in their official capacity;

(c) Any employee of the CFPB in their individual capacity where DOJ has agreed to represent the employee; or

¹ Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111–203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(8) Appropriate Federal, State, local, foreign, Tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license.

(9) The National Archives and Records Administration or other Federal Government agencies pursuant to records management inspections being conduct under the authority of 44 U.S.C. 2904 and 2906.

(10) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge; and

(11) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained in paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, but not limited to, name, email address, phone number, organization/office assignment, or by some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The CFPB maintains records in accordance with the NARA approved General Records Schedule (GRS) 5.3—Employee emergency contact information, Item 020. Records retention policy is to destroy when superseded or obsolete, or upon separation or transfer of employee.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the CFPB website: <https://www.consumerfinance.gov/foia-requests/submit-request/>.

CONTESTING RECORD PROCEDURES:

See “Access Procedures” above.

NOTIFICATION PROCEDURES:

See “Access Procedures” above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 52073.

Kathryn Fong,

Chief Privacy Officer, Consumer Financial Protection Bureau.

[FR Doc. 2024–13897 Filed 6–24–24; 8:45 am]

BILLING CODE 4810-AM-P

CONSUMER PRODUCT SAFETY COMMISSION

Public Availability of Consumer Product Safety Commission FY 2022 Service Contract Inventory, FY 2021 Service Contract Inventory Analysis, and Plan for FY 2022 Inventory Analysis

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC), in accordance with Division C of the Consolidated Appropriations Act, 2010, is announcing the availability of CPSC's service contract inventory for fiscal year (FY) 2022, CPSC's FY 2021 service contract inventory analysis, and the plan for analyzing CPSC's FY 2022 service contract inventory.

FOR FURTHER INFORMATION CONTACT: Eddie Ahmad, Director, Procurement

Services, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Telephone: 301–504–7884; email: aahmad@cpsc.gov.

SUPPLEMENTARY INFORMATION: Section 743(a) of the Consolidated Appropriations Act, 2010 (Consolidated Appropriations Act), Public Law 111–117, titled “Service Contract Inventory Requirement,” requires agencies to submit to the Office of Management and Budget (OMB), an annual inventory of service contracts awarded or extended through the exercise of an option on or after April 1, 2010. The contents of the inventory must include:

(A) A description of the services purchased by the agency and the role the services played in achieving agency objectives, regardless of whether such a purchase was made through a contract or task order;

(B) The organizational component of the agency that is administering the contract, and the component whose requirements are being met through contractor performance of the service;

(C) The total dollar amount obligated for services under the contract and the funding source for the contract;

(D) The total dollar amount invoiced for services under the contract;

(E) The contract type and date of award;

(F) The name of the contractor and place of performance;

(G) The number and work location of contractor and subcontractor employees, expressed as full-time equivalents for direct labor, compensated under the contract;

(H) Whether the contract is a personal services contract; and

(I) Whether the contract was awarded on a noncompetitive basis, regardless of date of award.

Section 743(a)(3)(A) through (I) of the Consolidated Appropriations Act. Section 743(c) of the Consolidated Appropriations Act requires agencies to “publish in the **Federal Register** a notice that the inventory is available to the public.” OMB also requires that agencies submit an analysis of the previous year's inventory, meaning the FY 2021 inventory under OMB's schedule, and a plan for how the agency will analyze the current year's inventory, which is the FY 2022 inventory under OMB's current guidelines.

Consequently, through this notice, we are announcing that the CPSC's service contract inventory for FY 2022 is available to the public.¹ The inventory

¹ The Commission voted (5–0) to publish this notice.

provides information on service contract actions that the CPSC made in FY 2022 per the Federal Acquisition Regulation (FAR) requirements in FAR part 4.1703. The information is organized by function to show how contracted resources are distributed throughout the CPSC. OMB posted a consolidated government-wide Service Contract Inventory for FY 2022 at <https://www.acquisition.gov/service-contract-inventory>. You can access the CPSC's inventories by limiting the "Contracting Agency Name" field on each spreadsheet to "Consumer Product Safety Commission."

Additionally, CPSC's Division of Procurement Services has posted CPSC's FY 2021 service contract inventory analysis and the plan for analyzing the FY 2022 inventory on CPSC's website at the following link: <https://www.cpsc.gov/Agency-Reports/Service-Contract-Inventory>.

Elina Lingappa,

Paralegal, Consumer Product Safety Commission.

[FR Doc. 2024-13910 Filed 6-24-24; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2024-SCC-0083]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the Innovative Assessment Demonstration Authority Pilot Program Survey Data Collections

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before July 25, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. Reginfo.gov provides two links to view documents

related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link. **FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Elizabeth Wilde, (202) 987-0594.

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

Title of Collection: Evaluation of the Innovative Assessment Demonstration Authority Pilot Program Survey Data Collections.

OMB Control Number: 1850-NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 108.

Total Estimated Number of Annual Burden Hours: 24.

Abstract: The Institute of Education Sciences (IES) is requesting clearance to administer surveys and follow-up interviews for a Congressionally mandated evaluation of the Innovative Assessment Demonstration Authority (IADA) program. Congress created the program to improve the quality and usefulness of assessments required under the Every Student Succeeds Act of 2015 (ESSA), by allowing the U.S. Department of Education (the Department) to exempt states that agree to pilot new assessments from certain testing requirements. IES had initially requested clearance in 2020 to survey participating IADA districts, schools, and teachers on the implementation of these new assessments. However, the COVID-19 pandemic and other challenges extensively slowed implementation, and two states have since withdrawn from IADA. As a result, there are few available districts, schools, and teachers that actually

administered the IADA assessment and could share their experiences in ways that would meaningfully contribute to this evaluation. IES is instead requesting to survey and conduct follow-up interviews with state assessment officials, technical advisors, and assessment vendors. Their perspectives will be more informative at this stage of the program and will lead to a much smaller overall burden on respondents.

Dated: June 18, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024-13816 Filed 6-24-24; 8:45 am]

BILLING CODE 4000-01-P

ELECTION ASSISTANCE COMMISSION

Request for Comment: Accessible Digital Form Filler Tool for the National Mail Voter Registration Form

AGENCY: Election Assistance Commission.

ACTION: Notice, request for comment.

SUMMARY: The U.S. Election Assistance Commission (EAC), in consultation with the Technology Transformation Services Office of Solutions (TTS) of the U.S. General Services Administration (GSA) is publishing the Accessible Digital Form Filler Tool for the National Mail Voter Registration Form for public comment. The intent of this tool is to improve the screen reader experience and allow for a customizable display, improving the accessibility and usability of the National Mail Voter Registration Form.

DATES: Comments must be received by 5 p.m. Eastern on Monday, July 22, 2024.

ADDRESSES: To view the Accessible Digital Form Filler Tool for the National Mail Voter Registration Form, see: <https://vote.gov/national-voter-registration-form-review/>. Email comments on the proposed Accessible Digital Form Filler Tool for the National Mail Voter Registration Form should be submitted electronically via clearinghouse@eac.gov. Written comments on the proposed Accessible Digital Form Filler Tool for the National Mail Voter Registration Form can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897-9285, Email: kmuthig@eac.gov.

SUPPLEMENTARY INFORMATION: GSA TTS developed a mobile-friendly, accessible tool to help people fill out the National Mail Voter Registration Form online, so that the voter can print and mail the form to their state election office. This digital tool streamlines over 20 pages of state-specific instructions and provides only the instructions and fields required for people based on their state. The digital tool improves the screen reader experience and allows for a customizable display, improving the accessibility and usability of the National Mail Voter Registration Form.

The EAC will use the feedback and information received through this public comment process, along with findings of the consultation with the Chief Election Official of each state, to inform GSA of improvements to the Accessible Digital Form Filler Tool for the National Mail Voter Registration Form. Response to this request for public comment is voluntary. 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 submitted comments, including your personal information, may be made available for public review.

Camden Kelliher,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024-13811 Filed 6-24-24; 8:45 am]

BILLING CODE 4810-71-P

DEPARTMENT OF ENERGY

Industrial Technology Innovation Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open virtual meeting of the Industrial Technology Innovation Advisory Committee (ITIAC). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 17, 2024: 12–5 p.m. EDT.

ADDRESSES: This meeting will be held virtually for ITIAC members and for members of the public. The ITIAC website will contain announcements about the meeting, including instructions for registering to attend: <https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee>.

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Pritchard, Industrial Efficiency and Decarbonization Office, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 246–4145 or Email: ITIAC@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Industrial Technology Innovation Advisory Committee (Committee) was established pursuant to the Energy Independence and Security Act (EISA) of 2007 as amended by Public Law 116–260, and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. The Committee is established to advise the Secretary of Energy (Secretary) with respect to the Industrial Emissions Reductions Technology Development Program (the program) by identifying and evaluating any technologies being developed by the private sector relating to the focus areas described in section 454(c) of the EISA; identifying technology gaps in the private sector or other Federal agencies in those focus areas, and making recommendations on how to address those gaps; surveying and analyzing factors that prevent the adoption of emissions reduction technologies by the private sector; and recommending technology screening criteria for technology developed under the program to encourage adoption of the technology by the private sector.

Purpose of Meeting: ITIAC will hold this meeting to continue its work toward developing a strategic plan on how to achieve the goals of the Industrial Emissions Reductions Technology Development Program and, in consultation with the Secretary and the Director of the Office of Science Technology and Policy (Director), propose missions and goals for the program consistent with the purposes of the program described in section 454(b)(1) of the EISA.

Tentative Agenda:

- Call to Order, Introductions, Review of the Agenda
- Progress Updates
- Discussion on Next Steps
- Public Comment Period and Closing Remarks
- Adjourn

All attendees are requested to register in advance. The ITIAC website will be updated with instructions and links to register for the meeting: <https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee>.

Public Participation: The ITIAC welcomes the attendance of the public at its meetings. Individuals who wish to

offer public comments at the ITIAC meeting may do so, but must register in advance by 5 p.m. Eastern time on July 15th, 2024, by sending a written request identified by “ITIAC July 2024 Meeting,” to Dr. Zachary Pritchard at ITIAC@ee.doe.gov. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the ITIAC, is invited to send a written statement identified by “ITIAC July 2024 Meeting—Written Statement,” to Dr. Zachary Pritchard at ITIAC@ee.doe.gov.

Minutes: Minutes will be posted on the ITIAC website: <https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee>. They can also be obtained by contacting ITIAC@ee.doe.gov.

Signing Authority: This document of the Department of Energy was signed on June 18, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024-13880 Filed 6-24-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. EA-513]

Application for Authorization To Export Electric Energy; Altop Energy Trading, LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Altop Energy Trading, LLC (the Applicant) has applied for authorization to transmit electric energy

from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 25, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Janessa Zucchetto, (240) 474-8226, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1-DEL-S3-2023 and Redelegation Order No. S3-DEL-GD1-2023.

On May 1, 2024, Altop Energy Trading LLC filed an application for authorization to transmit electric energy from the United States to Canada for a term of five years. App. at 1.

According to the Application, "Altop Energy Trading LLC is a Delaware Limited Liability Company with its principal place of business in Houston, TX." *Id.* The Applicant states that it is "engaged in the trading and marketing of both financial and physical electricity in the wholesale power markets in North America." *Id.* Further, the Applicant states that it has market-based rate authority from the Federal Energy Regulatory Commission. *Id.* Altop Energy Trading LLC states it "does not own or operate any electric distribution or transmission facilities" and "does not own or operate any generation assets." *Id.* Additionally, the Applicant represents that the energy to be exported will be surplus to the needs of selling entities and that its exports "will not impair the reliability of the grid." *Id.* at 2.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits

issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Altop Energy Trading LLC's Application should be clearly marked with GDO Docket No. EA-513. Additional copies are to be provided directly to Gebre-Egziabher Gebre, Altop Energy Trading LLC, 440 Louisiana Street, Suite 575, Houston TX 77002, gebre.gebre@altopenenergy.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on June 18, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024-13876 Filed 6-24-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. EA-470-A]

Application for Renewal of Authorization To Export Electric Energy; EDECSAMEX, S.A. de C.V.

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: EDECSAMEX, Sociedad Anónima de Capital Variable (the Applicant or EDECSAMEX) has applied for renewed authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 25, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Janessa Zucchetto, (240) 474-8226, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1-DEL-S3-2023 and Redelegation Order No. S3-DEL-GD1-2023.

On July 18, 2019, DOE issued Order No. EA-470 authorizing EDECSAMEX to export electricity from the United States to Mexico as a power marketer for a five-year term. On April 30, 2024, EDECSAMEX filed an application

(Application or App.) with DOE for renewal of their export authority for a five-year term. App. at 1.

According to the Application, EDECSAMEX is incorporated under the laws of Mexico with its principal place of business in Mexico City, Mexico. *Id.* The Applicant is authorized by Centro Nacional de Control de Energía, Mexico's national grid operator, to transact as a wholesale power marketer in Mexico and import and export electricity with the United States. *Id.* at 2. The Applicant represents that "neither EDECSAMEX nor any of its owners hold a franchised electric power service area nor have a native load obligation" and that it plans to source excess power supply from ERCOT, CAISO, and potentially other markets bordering Mexico. *See id.* at 3. EDECSAMEX asserts its commercial plan will not affect reliability or the sufficiency of the electric supply within the U.S. *Id.* The Applicant also represents its exports "will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Federal Energy Regulatory Commission[.]" *Id.* at 1.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See App.* at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EDECSAMEX's Application should be clearly marked with GDO Docket No. EA-470-A. Additional copies are to be provided directly to Vahid Sadeghpour, Sole Administrator, EDECSAMEX, S.A. de C.V., 2615 Centenary Street, Houston, TX 77005, vsadeghpour@grupodecsa.com, and Gregory Arroyo, Jr., Counsel for EDECSAMEX, S.A. de C.V., 124 Palm Blvd., Missouri City, TX 77459, garroyo@grupodecsa.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing

Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on June 17, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024-13875 Filed 6-24-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[Docket Number DOE-HQ-2024-0019]

Notice of Request for Information (RFI) Related to the Department of Energy's Equity Action Plan Update

AGENCY: Office of Energy Justice and Equity, Department of Energy.

ACTION: Request for information.

SUMMARY: The Department of Energy (DOE or the Department) is seeking information to assist in carrying out certain responsibilities under the Executive order (E.O.), "Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" issued on February 22, 2023. Among other requirements, section 3, subsection (b)(iii) of the E.O. directs Federal agencies to submit an Equity Action plan that includes "strategies, including new or revised policies and programs, to address the barriers described in subsection (b)(ii) of this section, and to ensure equitable access and opportunity

for underserved communities." DOE is soliciting information on one or more of the topics outlined in this RFI to address in the next update to the Equity Action Plan. The information provided in response to this RFI will inform the preparation of that update to the plan.

DATES: Comments are requested on or before August 9, 2024 and must be received no later than 11:59 p.m. eastern time (ET). DOE will not reply individually to responders but will consider all comments submitted by the deadline.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic submission: Submit electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov and enter DOE-HQ-2024-0019 in the search field,

2. Click the "Comment Now!" icon, complete the required fields, and

3. Enter or attach your comments.

Electronic submissions may also be sent as an attachment to EquityEO.RFI@hq.doe.gov in any of the following unlocked formats: HTML; ASCII; Word; RTF; Unicode, or PDF.

Written comments may also be submitted by mail to: Department of Energy, Office of Energy Justice and Equity, 1000 Independence Avenue SW, Washington, DC 20585.

Response to this RFI is voluntary. Submissions must not exceed 10 pages (when printed) in 12-point or larger font, with a page number provided on each page. Please include your name, organization's name (if any), and cite "DOE Equity Executive Order" in all correspondence.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. All comments and submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Relevant comments will generally be available on the Federal eRulemaking Portal at www.regulations.gov. DOE will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact:

EquityEO.RFI@hq.doe.gov or Bari Brooks, Department of Energy, Office of Energy Justice and Equity, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–1027. Direct media inquiries to DOE’s Office of Public Affairs at (202) 586–5000. Users of telecommunication devices for the deaf, or a text telephone, may call the Federal Relay Service toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

DOE is issuing this Request for Information (RFI) to receive public comment to learn about what further work DOE can do to help underserved/underrepresented groups. The responses to this RFI will help the Department understand potential barriers that underserved communities may face in accessing and benefitting from the agency’s policies, programs, and activities, including procurement, contracting, and grant opportunities, to equity that were not addressed in the 2022 Equity Action Plan (EAP) or the 2023 Equity Action Plan Update and inform what equity-related activities and performance metrics the Department should prioritize in the 2024 update to DOE’s Equity Action Plan.

This effort will enable DOE to further execute the President’s Executive orders 13985 and 14091, entitled “Advancing (and Further Advancing . . .) Racial Equity and Support for Underserved Communities Through the Federal Government” (Equity E.O.s), signed by the President on January 20, 2021, and February 16, 2023, respectively. E.O. 13985 calls to promote racial equity and support for underserved communities through the U.S. government—including communities of color, people with disabilities, LGBTQ people, religious minorities, people living in rural areas, and people living in poverty. The order directs federal agencies to eliminate systemic barriers to care, such as unequal access to services and inadequate or lack of insurance coverage, and to provide equal access to opportunities and benefits for underserved and underrepresented communities. E.O. 14091 extends and strengthens equity-advancing requirements for federal agencies with the intent to deliver better outcomes for the American people. It also further defined equity-related terms for the purposes of the order, including updates to definitions from previous orders and directives to the following:

- “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; LGBTQI+ 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.

- “Underserved communities” refers to those populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of “equity”, as defined in Executive orders 13985 and 14020.

As required by Executive Order 13985, DOE released its first EAP in April 2022. DOE provided an update to its initial plan pursuant to E.O. 14091 with five new strategies to prioritize in the second plan it released in February 2024.

The DOE EAP outlines key actions that the Department will undertake to embed equity throughout its policies and programs. Click here to see the plans: www.energy.gov/sites/default/files/2022-04/DOE%20Equity%20Action%20Plan%20Letterhead.pdf www.energy.gov/justice/articles/doe-equity-action-plan-and-2023-update-2022-plan.

The public is encouraged to provide input in response to the questions listed in section II to help the Department understand the impact of our equity activities to date and inform what efforts we prioritize as we update DOE’s Equity Action Plan.

II. Questions

A. The Department of Energy seeks public input on the current strategies listed in the 2023 Equity Action Plan Update. The public is encouraged to provide input in response to the questions below to help the Department understand the impact of our equity activities to-date.

Community Benefits Plans Implementation

1. In response to the Executive Order 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government”, DOE has included a strategic goal to “establish a DOE-wide Community Benefits Plan (CBP)

framework that builds trust and improves outcomes for underserved communities, which in turn supports successful Deployment & Demonstration and R&D projects that advance an equitable clean energy transition.” Are there additional actions that DOE should take to remove barriers for underserved communities? Are there additional metrics that DOE should be using to track success towards improved outcomes?

Merit Reviewer Program

2. In response to the Executive Order 14091, DOE has included a strategic goal to “update the DOE Merit Review Program to improve equitable outcomes for DOE awards.” What additional improvements could DOE make in the merit reviewer recruitment and communication process to remove barriers for underrepresented groups?

Procurement and Access

3. DOE is seeking feedback on how communities struggle with completing applications for funding and how DOE can help. What resources could DOE provide to better assist underserved communities in identifying new opportunities to be awarded a contract or grant and completing applications?

4. What resources could DOE provide to better assist underserved communities in properly managing and executing DOE grant or cooperative agreement projects?

5. Have you encountered barriers within DOE’s procurement process that prevent underserved communities from receiving awards of DOE contracts? Please provide specific examples.

Justice40 Research and Development Metrics

6. In response to Executive Order 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government”, DOE has included a strategic goal to “integrate and track justice considerations through a metrics framework for the Department’s R&D strategy by providing consistent communication of expectations and efficient coordination and implementation of reporting requirements across the Department.” What additional improvements could DOE make in the collection and distribution of Justice40 R&D metrics? Are there additional actions or metrics that the Department should consider?

Outreach/Engagement

7. In response to Executive Order 14091, “Further Advancing Racial Equity and Support for Underserved

Communities Through the Federal Government”, DOE has included a strategic goal to “develop an agency-wide framework to effectively work with Tribal and disadvantaged communities to reimagine their clean energy future through real investments and technical assistance and ensure that community voices and decision-making are integrated into DOE funding, research, and programming.” How should DOE coordinate, communicate, and/or engage with these communities? What could meaningful engagement look like?

B. The Department of Energy is seeking to address additional barriers in its programs and policies in future equity action plans. The public is encouraged to provide input in response to the questions below to inform what efforts we prioritize as we update DOE’s Equity Action Plan.

Energy Jobs/Workforce

1. As America transitions to a clean energy economy, historic Federal investments can further three interrelated goals: creating more domestic jobs, attracting and retaining workers in good jobs, and prioritizing inclusive access to those good jobs, including for underserved and underrepresented populations. What strategies should DOE prioritize to achieve these three interrelated goals? What factors are the most pronounced barriers facing workers, including underserved and underrepresented populations, to join and succeed in the energy workforce? How could DOE help to reduce or eliminate those barriers?

Additional Unidentified Barriers

2. What additional barriers in DOE’s policies, programs, processes should the Department consider examining as it continues to develop strategies for future equity action plans?

Signing Authority

This document of the Department of Energy was signed on June 18, 2024, by Shalanda H. Baker, Director, Office of Energy Justice and Equity, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters

the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–13905 Filed 6–24–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–514]

Application for Renewal of Authorization To Export Electric Energy; Altop Energy Trading Texas LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Altop Energy Trading Texas LLC (the Applicant) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 25, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Janessa Zucchetto, (240) 474–8226, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE’s Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2023 and Redlegation Order No. S3–DEL–GD1–2023.

On May 23, 2023, Altop Energy Trading Texas LLC filed an application (Application or App.) with DOE to transmit electric energy from the United

States to Mexico for a five-year term. App. at 1.

According to the Application, Altop Energy Trading Texas LLC is a Delaware Limited Liability Company with its principal place of business in Houston, TX. *Id.* The Applicant states that it is “engaged in the trading and marketing of both financial and physical electricity in the wholesale power markets in North America.” *Id.* Further, the Applicant states that it is authorized as a Qualified Scheduling Entity by the Electricity Reliability Council of Texas. *Id.* Altop Energy Trading Texas LLC states it does not “own or operate any electric distribution or transmission facilities” and “does not own or operate any generation assets.” *Id.* The Applicant represents that the energy to be exported will be surplus to the needs of selling entities and that its exports “will not impair the reliability of the grid.” *Id.* at 2.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Attachment 1.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email address provided previously. Protests should be filed in accordance with Rule 211 of FERC’s Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previously provided email address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Altop Energy Trading Texas LLC’s Application should be clearly marked with GDO Docket No. EA–514. Additional copies are to be provided directly to Gebre-Egziabher Gebre, Altop Energy Trading LLC, 440 Louisiana Street, Suite 575, Houston TX 77002, gebre.gebre@altopenenergy.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE’s National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending->

applications-0 or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on June 17, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024-13877 Filed 6-24-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. EA-385-B]

Application for Renewal of Authorization To Export Electric Energy; Dynasty Power, Inc.

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Dynasty Power, Inc. (Dynasty Power or the Applicant) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 25, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Janessa Zucchetto, (240) 474-8226, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act

(42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1-DEL-S3-2023 and Redlegation Order No. S3-DEL-GD1-2023.

In September 2012, DOE issued Order EA-385 to Dynasty Power to transmit electric energy from the United States to Canada as a power marketer. On May 15, 2019, DOE issued Order EA-3385-A renewing this authorization. On May 13, 2024, Dynasty Power filed an application with DOE (Application or App.) for renewal of their export authority for an additional five-year term. App. at 1.

According to the Application, Dynasty Power is incorporated in the Canadian province of Alberta, with its principal place of business in Calgary, Alberta. App. at 1. The Applicant's "sole business is to act as a power marketer in the purchase and sale of wholesale electricity, capacity, and ancillary services at market-based rates[.]" *Id.* The Applicant "does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area." *Id.* at 2. Dynasty Power represents that it "will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities." *Id.* at 3. Further, the Applicant states that its "export of power will not impair the sufficiency of electric power supply in the U.S." *Id.* Additionally, the Applicant states its transactions will comply with all North American Electric Reliability Corporation requirements and export limits, which ensure such exports "will not impede or tend to impede the coordinated use of transmission facilities within the meaning of Section 202(e) of the FPA." *Id.* at 3-4.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding

should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Dynasty Power's Application should be clearly marked with GDO Docket No. EA-385-B. Additional copies are to be provided directly to Todd McRae, Dynasty Power Inc., 411 8th Avenue SW, Calgary, AB T2P 1E3, Canada, tmcrae@dynastypower.ca; Jeffrey M. Jakubiak and Jennifer C. Mansh, Vinson & Elkins LLP, 1114 6th Avenue 32nd Floor, New York, NY 10036, jjakubiak@velaw.com, jmansh@velaw.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on June 17, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024-13873 Filed 6-24-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**[GDO Docket No. EA-466-A]****Application for Renewal of Authorization To Export Electric Energy; Dynasty Power, Inc.****AGENCY:** Grid Deployment Office, Department of Energy.**ACTION:** Notice of application.

SUMMARY: Dynasty Power, Inc. (Dynasty Power or the Applicant) has applied for renewed authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 25, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Janessa Zucchetto, (240) 474-8226, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1-DEL-S3-2023 and Redelegation Order No. S3-DEL-GD1-2023.

On May 15, 2019, DOE issued Order EA-466 to Dynasty Power to transmit electric energy from the United States to Mexico as a power marketer. On May 13, 2024, Dynasty Power filed an application with DOE (Application or App.) for renewal of their export authority for an additional five-year term. App. at 1.

According to the application, Dynasty Power is incorporated in the Canadian province of Alberta, with its principal place of business in Calgary, Alberta. App. at 1. The Applicant's "sole business is to act as a power marketer in the purchase and sale of wholesale

electricity, capacity, and ancillary services at market-based rates" *Id.* The Applicant states it "does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area." *Id.* at 2. Dynasty Power represents that it "will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Mexico over the international electric transmission facilities." *Id.* at 3. Further, the Applicant states that its "export of power will not impair the sufficiency of electric power supply in the U.S." *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Dynasty Power's Application should be clearly marked with GDO Docket No. EA-466-A. Additional copies are to be provided directly to Todd Mcrae, Dynasty Power Inc., 411 8th Avenue SW, Calgary, AB T2P 1E3, Canada, tmcrae@dynastypower.ca; Jeffrey M. Jakubiak and Jennifer C. Mansh, Vinson & Elkins LLP, 1114 6th Avenue 32nd Floor, New York, NY 10036, jjakubiak@velaw.com, jmansh@velaw.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on

June 18, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024-13874 Filed 6-24-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Agency Information Collection Extension****AGENCY:** U.S. Department of Energy.**ACTION:** Notice of request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before August 26, 2024. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to: Oluwatosin Fadarey, Attorney-Adviser (Labor), GC-63, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, oluwatosin.fadarey@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Oluwatosin Fadarey, Attorney-Adviser (Labor), GC-63, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, oluwatosin.fadarey@hq.doe.gov, Telephone: (240) 751-3745.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended 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 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 respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.*: 1910–5165.

(2) *Information Collection Request Titled*: U.S. Department of Energy Semi-Annual Davis Bacon Enforcement Report.

(3) *Type of Review*: Renewal.

(4) *Purpose*: This information collection ensures Departmental compliance with 29 CFR 5.7(b). The respondents are Department of Energy Management & Operating contractors, Facilities Management contractors, and recipients of financial assistance whose work is subject to the Davis-Bacon Act and Davis-Bacon Related Acts.

(5) *Annual Estimated Number of Respondents*: 150.

(6) *Annual Estimated Number of Total Responses*: 300.

(7) *Annual Estimated Number of Burden Hours*: 600.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$120.71 per respondent.

Statutory Authority: 29 CFR 5.7(b).

Signing Authority

This document of the Department of Energy was signed on June 18, 2024, by John T. Lucas, Deputy General Counsel for Business Transactions, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 18, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–13820 Filed 6–24–24; 8:45 am]

BILLING CODE 6450–01–P

1115TH—MEETING

[Open meeting—June 27, 2024, 10:00 a.m.]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: June 27, 2024, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Debbie-Anne A. Reese, Acting Secretary, Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at <https://elibrary.ferc.gov/eLibrary/search> using the eLibrary link.

Item No.	Docket No.	Company
Administrative		
A-1	AD24–1–000	Agency Administrative Matters.
A-2	AD24–2–000	Customer Matters, Reliability, Security and Market Operations.
Electric		
E-1	RM24–6–000	Implementation of Dynamic Line Ratings.
E-2	ER23–2977–000, ER23–2977–001, ER23–2977–002.	Midcontinent Independent System Operator, Inc.
E-3	ER17–1433–005	PJM Interconnection, L.L.C.
E-4	RD24–5–000, RD24–1–000	North American Electric Reliability Corporation.
E-5	RM21–12–000	Revisions to Regulations on Electric Reliability Organization Performance Assessments.
E-6	RR24–2–000	North American Electric Reliability Corporation.
E-7	EL24–6–000	Gregory and Beverly Swecker.
E-8	EL24–71–000	Southern California Edison Company.
E-9	EL24–3–000	Missouri River Energy Services v. Southwest Power Pool, Inc.
E-10	ER23–150–000	Southern Power Company.
E-11	ER22–1697–002	Southwest Power Pool, Inc.
E-12	ER23–1752–003, EL24–63–004	Oak Trail Solar, LLC.
E-13	EL24–92–000	Cometa Energia, S.A. de C.V., /o/b/o., Energia Azteca X, S. de R.L. de C.V. v. California Independent System Operator Corporation.
E-14	ER24–1881–000	Canisteo Wind Energy LLC.
E-15	ER23–1067–002	PJM Interconnection, L.L.C.
E-16	EL23–13–000	Roy J. Shanker v. PJM Interconnection, L.L.C.
Gas		
G-1	RP24–395–001	Gulf South Pipeline Company, LLC.

1115TH—MEETING—Continued
[Open meeting—June 27, 2024, 10:00 a.m.]

Item No.	Docket No.	Company
Hydro		
H-1	P-77-320	Pacific Gas and Electric Company.
H-2	P-553-245	City of Seattle, Washington.
H-3	P-1494-468	Grand River Dam Authority.
Certificates		
C-1	CP24-49-000	Algonquin Gas Transmission, LLC.
C-2	CP24-21-000	Algonquin Gas Transmission, LLC.
C-3	CP17-40-018	Spire STL Pipeline LLC.
C-4	CP17-40-019	Spire STL Pipeline LLC.
C-5	CP22-21-000, CP22-22-000	Venture Global CP2 LNG, LLC.
		Venture Global CP Express, LLC.
C-6	CP22-495-001	Transcontinental Gas Pipe Line Company, LLC.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502-8680 or email customer@ferc.gov if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: June 20, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14052 Filed 6-21-24; 4:15 pm]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12041-01-OA]

Public Meetings of the Science Advisory Board Environmental Justice Science and Analysis Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public meetings of the Science Advisory Board Environmental Justice Science and

Analysis Review Panel. The purpose of the meetings is to discuss the panel's draft peer review report of the EPA's draft Revised Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (EJTG). The Panel will also discuss their self-initiated commentary outlining recommendations on advancing environmental justice science in rulemaking.

DATES:

Public meetings: The Science Advisory Board Environmental Justice Science and Analysis Review Panel will meet on the following dates. All times listed are in Eastern Time.

1. July 25, 2024, from 1:00 p.m. to 5:00 p.m.

2. July 30, 2024, from 1:00 p.m. to 5:00 p.m.

Comments: See the section titled "Procedures for providing public input" under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The meetings will be conducted virtually. Please refer to the SAB website at <https://sab.epa.gov> for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), via telephone (202) 564-2057, or email at shallal.suhair@epa.gov. General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at <https://sab.epa.gov>.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act

(ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S. Code 10. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board Environmental Justice Science and Analysis Review Panel will hold two public meeting(s) to discuss the panel's draft peer review report on the EPA's draft Revised Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (EJTG). The Panel will also discuss their self-initiated commentary outlining recommendations on advancing environmental justice science in rulemaking.

Availability of Meeting Materials: All meeting materials, including the agenda will be available on the SAB web page at <https://sab.epa.gov>.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it

provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted virtually will be limited to three minutes and individuals or groups requesting an oral presentation at an in-person meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted under **FOR FURTHER INFORMATION CONTACT**, by July 22, 2024, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by July 22, 2024, for consideration at the July 25 and 30, 2024 meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting(s), to give the EPA as much time as possible to process your request.

Meeting cancellation: If the meetings are cancelled, a cancellation notice will be posted on the SAB website at <https://sab.epa.gov>.

V Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2024–13893 Filed 6–24–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1286; FR ID 227277]

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.”

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.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 25, 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 Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@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 Nicole Ongele at (202) 418–2991. 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: 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: 3060–1286.

Title: Emergency Connectivity Fund Program.

Form Number: FCC Forms 471, 472, 474, 486, 488, and 500.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, local or tribal government, and other not-for-profit institutions.

Number of Respondents and Responses: 23,000 respondents; 132,100 responses.

Estimated Time per Response: 4.5 hours for FCC Form 471 (4 hours for response; 0.5 hours for recordkeeping); 1.5 hours for FCC Forms 472/474 (1 hour for response; 0.5 hours for recordkeeping); 1.5 hours for Emergency Connectivity Fund Post-Commitment Change Request—FCC Form 488 (streamlines collection based on the

FCC Forms 486 and 500 and FCC Form 471 for use in the Emergency Connectivity Fund Program) (1 hour for response; 0.5 hours for recordkeeping)).

Frequency of Response: On occasion and annual reporting requirements; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405 and section 7402 of the American Rescue Plan Act, Public Law 117–2, 135 Stat. 4.

Total Annual Burden: 315,450 hours.

Total Annual Cost: No Cost.

Needs and Uses: The requirements contained herein are necessary to implement and administer the Congressional mandate for the Emergency Connectivity Fund. The information collected herein provides the Commission and USAC with the necessary information to administer the Emergency Connectivity Fund Program, determine the amount of support entities seeking funding are eligible to receive, determine if entities are complying with the Commission's rules, and to prevent waste, fraud, and abuse. The information also allows the Commission to evaluate the extent to which the Emergency Connectivity Fund is meeting the statutory objectives specified in section 7402 of the American Rescue Plan Act, the Commission's performance goals set forth in the *Emergency Connectivity Fund Report and Order*, and to evaluate the need for and feasibility of any future revisions to program rules. The name, address, DUNS number and business type will be disclosed in accordance with the Federal Funding Accountability and Transparency Act/ Digital Accountability and Transparency Act (FFATA/DATA Act) reporting requirements. Emergency Connectivity Fund Program application, commitment, and disbursement data is also publicly available.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–13824 Filed 6–24–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 23–1; DA 23–471; FR ID [226670]]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing a meeting of the North American Numbering Council (NANC).

DATES: December 12, 2024. The meeting will come to order at 2:00 p.m.

ADDRESSES: The meeting will be conducted in person in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC, and available to the public via the internet at <http://www.fcc.gov/live>.

FOR FURTHER INFORMATION CONTACT: You may also contact Christi Shewman, Designated Federal Officer, at christi.shewman@fcc.gov or 202–418–0646. More information about the NANC is available at <https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council>.

SUPPLEMENTARY INFORMATION: The meeting will be held Thursday, December 12, 2024 from 2:00 p.m. until 4:00 p.m. ET in person in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC and via the internet at <http://www.fcc.gov/live>. While the meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees will not be required to have an appointment but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>. Additionally, the meeting will be available to the public via live feed from the FCC's web page at <http://www.fcc.gov/live>. Open captioning will be provided online for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530. Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request.

Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the NANC should be filed in WC Docket No. 23–1.

This is a summary of the Commission's document in WC Docket No. 23–1, DA 24–554, released June 11, 2024.

Proposed Agenda: At the December meeting, the NANC will consider and vote on reports and recommendations from the following Working Groups: (1) The Call Authentication Trust Anchor Working Group regarding foreign-originated calls, the use of indirectly obtained numbers, and the use of numbers supplied on a trial basis by interconnected VoIP providers that obtain direct access to numbers; (2) the Numbering Administration Oversight Working Group regarding number use and resale, and number reclamation, by interconnected VoIP providers that obtain direct access to numbers; and (3) the Internet of Things Numbering Usage Working Group regarding the use of North American Numbering Plan numbers for the routing and addressing of Internet of Things communications. (5 U.S.C. ch. 10)

Federal Communications Commission.

Edward Krachmer,

Deputy Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2024–13909 Filed 6–24–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0715, OMB 3060–0742; FR ID 227288]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and 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. Comments are requested concerning:

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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before August 26, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents and Responses: 2,935 respondents; 24,427 responses.

Estimated Time per Response: 0.1–120 hours.

Frequency of Response: On occasion, annual, and one-time reporting requirements; recordkeeping; and third party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for these collections are contained in sections 201 and 222 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 222.

Total Annual Burden: 206,203 hours.

Total Annual Cost: No Cost.

Needs and Uses: Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, establishes the duty of telecommunications carriers to protect the confidentiality of its customers' proprietary information. This proprietary information includes personally identifiable information derived from a customer's relationship with a provider of telecommunications services. This information collection implements the statutory obligations of Section 222. These regulations impose safeguards to protect Customer Proprietary Network Information (CPNI) and other customer proprietary information against unauthorized access and disclosure.

On November 16, 2023, the FCC released the *SIM Swap and Port-Out Fraud Order* (88 FR 85794 (December 8, 2023)), which adopted a baseline framework to combat SIM swap fraud by amending section 64.2010 of the CPNI rules to add paragraph (h) on Subscriber Identity Module (SIM) changes and adds new information collection requirements in paragraphs (h)(2) through (6) and (h)(8) of that rule. A SIM swap involves the fraudulent transfer (or "swap") of an account from a device associated with one SIM to a device associated with a different SIM, allowing a bad actor to control the victim's mobile account and access the victim's CPNI. The new rules establish a uniform framework that gives wireless providers flexibility to implement customer authentication and security methods to address SIM swap fraud. The *SIM Swap and Port-Out Fraud Order* modifies the existing CPNI collection requirements to require wireless providers to: (1) adopt processes for responding to failed authentication attempts in connection with a SIM change request; (2) immediately notify customers of any requests for a SIM change associated with the customer's account before the SIM change is completed; (3) offer all customers, at no cost, the option to lock or freeze their account to stop SIM change requests; (4) provide customers with advance notice of any account protection measures offered; (5) maintain a clear process for customers to report SIM fraud, promptly investigate and remediate fraud, and promptly provide customers with documentation of fraud involving their accounts; and (6) track and maintain for three years a record of SIM change requests and authentication measures used.

On December 21, 2023, the Commission released the *Data Breach Report and Order* (89 FR 9968 (February

12, 2024)), which modifies the scope of customer data and reportable breaches covered by the Commission's rules, and also modifies the Commission's data breach notification rules to require covered service providers to electronically notify the FCC of a reportable data breach through a link to a central reporting facility, contemporaneously with the existing obligation to notify the United States Secret Service Bureau (Secret Service) and the Federal Bureau of Investigation (FBI), and adopts equivalent requirements for Telecommunications Relay Services (TRS) providers. Covered service providers include providers of telecommunications, interconnected Voice over internet Protocol (VoIP), and TRS. All covered providers are required to maintain a record, electronically or in some other manner, of any breaches discovered, and notifications made. Covered providers are also required to submit, via the central reporting facility, an annual reporting of certain small breaches.

OMB Control Number: 3060–0742.

Title: Sections 52.21 through 52.37, Telephone Number Portability, 47 CFR part 52, subpart (C), and CC Docket No. 95–116.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 6,026 respondents; 10,002,000 responses.

Estimated Time per Response: 0.0666 hours–60 hours.

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2) and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 748,410 hours.

Total Annual Cost: No cost.

Needs and Uses: Section 251(b)(2) of the Communications Act of 1934, as amended, requires LECs to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Through the LNP process, consumers have the ability to retain their phone number when switching telecommunications service providers, enabling them to choose a provider that best suits their needs and enhancing competition. In the Porting Interval Order and Further Notice, the

Commission mandated a one business day porting interval for simple wireline-to-wireline and intermodal port requests. The information collected in the standard local service request data fields is necessary to complete simple wireline-to-wireline and intermodal ports within the one business day porting interval mandated by the Commission and will be used to comply with section 251 of the Telecommunications Act of 1996.

On November 16, 2023, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking* (88 FR 85794 (Dec. 8, 2023)) (*SIM Swap and Port-Out Fraud Order*), which adds new information collection requirements. The *SIM Swap and Port-Out Fraud Order* adopted baseline measures to increase protections for customers against fraudulent port-outs by adding new section 52.37 in part 52, and adds new information collection requirements in paragraphs (c) through (e), and (g), of that rule. Port-out fraud occurs where a bad actor impersonates a customers of a wireless provider and convinces the provider to port the real customer's telephone number to a new wireless provider and a device that the bad actor controls, allowing a bad actor to control the victim's mobile account and receive text messages and phone calls intended for the victim. The new rules establish a uniform framework that gives wireless providers flexibility to implement customer authentication and security methods to address port-out fraud. Wireless providers are required to comply with the new or modified rules except where the Safe Connections Act requires alternate procedures to be used. The *SIM Swap and Port-Out Fraud Order* modifies the existing Local Number Portability collection requirements to require wireless providers to: (1) immediately notify customers of any requests for a port-out request associated with the customer's account before effectuating the request; (2) offer all customers, at no cost, the option to lock or freeze their account to prohibit wireless providers from processing requests to port the customer's number; (3) provide customers with advance notice of any account protection measures offered; and (4) maintain a clear process for customers to report fraudulent number ports, promptly investigate and take reasonable steps within its control to remediate fraudulent ports, and promptly provide customers with documentation of fraudulent ports involving their accounts.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024-13882 Filed 6-24-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0998; FR ID 227364]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC 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.

DATES: Written comments should be submitted on or before August 26, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0998.

Title: Section 87.109, Station logs.

Form No.: N/A.

Type of Review: Extension of a

currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and

Responses: 17 respondents and 17 responses.

Estimated Time per Response: 100 hours.

Frequency of Response:

Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154, 303 and 307(e) unless otherwise noted.

Total Annual Burden: 1,700 hours.

Annual Cost Burden: No cost.

Needs and Uses: The information collection requirements contained in Section 87.109 of the Commission's rules require that a station at a fixed location in the international aeronautical mobile service (IAMS) must maintain a log (written or automatic log) in accordance with the Annex 10 provisions of the International Civil Aviation Organization (ICAO) Convention. This log is necessary to document the quality of service provided by fixed stations, including the harmful interference, equipment failure, and logging of distress and safety calls where applicable. This information is used by the Commission to ensure that particular stations are licensed and operated in compliance with applicable rules, statutes, and treaties.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024-13883 Filed 6-24-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0139, OMB 3060-0979; FR ID 227145]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC 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.

DATES: Written comments should be submitted on or before August 26, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0139.

Title: Application for Antenna Structure Registration.

Form Number: FCC Form 854.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions, and State, local, or Tribal governments.

Number of Respondents and Responses: 2,400 respondents; 57,100 responses.

Estimated Time per Response: .33 hours to 2.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third-party disclosure reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 303, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, and 309(j), section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 1506.6 of the regulations of the Council on Environmental Quality, 40 CFR 1506.6.

Total Annual Burden: 25,682 hours.

Total Annual Cost: \$1,176,813.

Needs and Uses: The purpose of FCC Form 854 (Form 854) is to register antenna structures that are used for radio communication services which are regulated by the Commission; to make changes to existing antenna structure registrations or pending applications for registration; or to notify the Commission of the completion of construction or dismantlement of such structures, as required by Title 47 of the Code of Federal Regulations, Chapter 1, Sections 1.923, 1.1307, 1.1311, 17.1, 17.2, 17.4, 17.5, 17.6, 17.7, 17.57 and 17.58.

Any person or entity proposing to construct or alter an antenna structure that is more than 60.96 meters (200 feet) in height, or that may interfere with the approach or departure space of a nearby airport runway, must notify the Federal Aviation Administration (FAA) of proposed construction. The FAA determines whether the antenna structure constitutes a potential hazard and may recommend appropriate painting and lighting for the structure. The Commission then uses the FAA's recommendation to impose specific painting and/or lighting requirements on radio tower owners and subject licensees. When an antenna structure owner for one reason or another does not register its structure, it then becomes the responsibility of the tenant licensees to ensure that the structure is registered with the Commission.

Section 303(q) of the Communications Act of 1934, as amended, gives the Commission authority to require painting and/or illumination of radio towers in cases where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation. In 1992, Congress amended Sections 303(q) and 503(b)(5) of the Communications Act to make radio tower owners, as well as Commission

licensees and permittees responsible for the painting and lighting of radio tower structures, and to provide that non-licensee radio tower owners may be subject to forfeiture for violations of painting or lighting requirements specified by the Commission.

OMB Control Number: 3060-0979.

Title: License Audit Letter.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 25,000 respondents; 25,000 responses.

Estimated Time per Response: .50 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 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 and 535.

Total Annual Burden: 12,500 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission is seeking OMB approval for an extension of this information collection in order to obtain their full three-year approval. There is no change to the reporting requirement. There is no change to the Commission's burden estimates. The Wireless Telecommunications (WTB) and Public Safety and Homeland Security Bureaus (PSHSB) of the FCC periodically conduct audits of the construction and/or operational status of various Wireless radio stations in its licensing database that are subject to rule-based construction and operational requirements. The Commission's rules for these Wireless services require construction within a specified timeframe and require a station to remain operational in order for the license to remain valid. The information will be used by FCC personnel to assure that licensees' stations are constructed and currently operating in accordance with the parameters of the current FCC authorization and rules.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024-13823 Filed 6-24-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**[OMB 3060–0874, OMB 3060–1215; FR ID 227143]****Information Collections 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 July 25, 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: 3060–0874.

Title: Consumer Complaint Center: Informal Consumer Complaints.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 269,680 respondents; 269,680 responses.

Estimated Time per Response: 15 minutes (.25 hour) to 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. The statutory authority for this collection is contained in 47 U.S.C. 208 and 47 U.S.C. 1754(e).

Total Annual Burden: 68,000 hours.

Total Annual Cost: None.

Needs and Uses: The Commission consolidated all of the FCC informal consumer complaint intake into an online consumer complaint portal, which allows the Commission to better manage the collection of informal consumer complaints. Informal consumer complaints consist of informal consumer complaints, inquiries and comments. This revised information collection requests OMB approval for the addition of a layer of consumer reported complaint information related to digital discrimination complaints. In addition, changes to certain complaint forms to improve the clarity, ease of use and utility of the CCC.

This will allow the Commission to process consumer complaints more efficiently and provide more detailed data to inform enforcement and policy efforts.

OMB Control Number: 3060–1215.

Title: Use of Spectrum Bands Above 24 GHz for Mobile Radio Services.

Form Number: N/A.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 478 respondents; 1,846 responses.

Estimated Time per Response: 0.5–10 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement; upon commencement of service, at end of license term, or 2024 for incumbent licensees.

Obligation to Respond: Statutory authority for this collection are contained in sections 1, 2, 3, 4, 5, 7, 10, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, and 336 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 160, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, 336, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

Total Annual Burden: 2,574 hours.

Annual Cost Burden: \$533,500.

Needs and Uses: The Commission is activating sections 30.104 and 30.107, because existing 28 GHz licensees shall be required to make a performance requirement showing pursuant to section 30.104 by June 16, 2024, and after that date, the obligation to report discontinuance pursuant to section 30.107 will apply. The activation of the rules will change the number of

respondents, the annual number of responses, annual burden hours and annual costs under this collection.

The other rule sections previously approved under OMB Control Number 3060–1215 have not changed.

§ 30.104, Subpart B—Applications and Licenses—Construction Requirements

(a) UMFUS (Upper Microwave Flexible Use Service) licensees must make a buildout showing as part of their renewal applications. Licensees relying on mobile or point-to-multipoint service must show that they are providing reliable signal coverage and service to at least 40 percent of the population within the service area of the licensee, and that they are using facilities to provide service in that area either to customers or for internal use. Licensees relying on point-to-point service must demonstrate that they have four links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, a licensee relying on point-to-point service must demonstrate it has at least one link in operation and is providing service for each 67,000 population within the license area.

(b) Existing 39 GHz licensees shall not be required to make a showing pursuant to this rule and shall be governed by the provisions of § 101.17 of this chapter if the expiration date of their license is prior to March 1, 2021. Showings that rely on a combination of multiple types of service will be evaluated on a case-by-case basis.

(c) If a licensee in this service is also a Fixed-Satellite Service (FSS) licensee and uses the spectrum covered under its UMFUS license in connection with a satellite earth station, it can demonstrate compliance with the requirements of this section by demonstrating that the earth station in question is in service, operational, and using the spectrum associated with the license. This provision can only be used to demonstrate compliance for the county in which the earth station is located.

(d) Failure to meet this requirement will result in automatic cancellation of the license. In bands licensed on a Partial Economic Area basis, licensees will have the option of partitioning a license on a county basis in order to reduce the population within the license area to a level where the licensee's buildout would meet one of the applicable performance metrics.

(e) Existing 28 GHz and 39 GHz licensees shall be required to make a

showing pursuant to this rule by June 1, 2024.

§ 30.107, Subpart B—Applications and Licenses—Discontinuance of Service

An Upper Microwave Flexible Use License authorization will automatically terminate, without specific Commission action, if the licensee permanently discontinues service after the initial license term.

(a) For licensees with common carrier regulatory status, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee in the individual license area. For licensees with non-common carrier status, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not operate.

(b) A licensee that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–13822 Filed 6–24–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1291; FR ID 227144]

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 July 25, 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: 3060-1291.

Title: Legacy High-Cost Support Recipient Initial Report of Current Service Offerings.

Form Number: N/A.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: Up to 110 respondents and 110 responses.

Estimated Time per Response: 16 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 254 and 303(r).

Total Annual Burden: 1,760 hours.

Total Annual Cost: No cost.

Needs and Uses: On November 18, 2011, the Commission released the USF/ICC Transformation Order (FCC 11-161) in which it comprehensively reformed and modernized the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. In the USF/ICC Transformation Order, the Commission, among other things, adopted a requirement that all eligible telecommunications carriers (ETCs) offer broadband service in their supported area that meets certain basic performance requirements and report regularly on associated performance measures as a condition of receiving federal high-cost universal service support.

On October 27, 2020, the Commission adopted the 5G Fund Report and Order (FCC 20-150) in which it, among other things, helped to complete the reform of the high-cost program begun in the USF/ICC Transformation Order by adopting additional public interest obligations and performance requirements for legacy high-cost support recipients, whose broadband-specific public interest obligations for mobile wireless services were not previously detailed. The public interest obligations adopted in the 5G Fund Report and Order for each competitive ETC receiving legacy high-cost support for mobile wireless services require that such competitive ETC (1) use an increasing percentage of its legacy support toward the deployment, maintenance, and operation of voice and broadband networks that support 5G meeting the adopted performance requirements within its subsidized service area(s), and (2) meet specific 5G broadband service deployment coverage requirements and service deployment milestone deadlines that take into consideration the amount of legacy support the carrier receives.

In order to gain a complete understanding of the current service offerings of each competitive ETC receiving legacy high-cost support for mobile wireless services, the Commission adopted rules that require each such competitive ETC to file an initial report containing information and certifications about its current mobile service offerings in each of its subsidized service areas and how it is using legacy support and whether it is offering mobile services in its subsidized service areas at rates that are reasonably comparable to those charged in urban areas. See 47 CFR 54.322(g), (h). The information and certifications provided in these initial reports will be used by the Commission to ensure that competitive ETCs receiving legacy high-cost support for mobile wireless services deploy 5G service by in their subsidized service areas consistent with the rules adopted by the Commission in the 5G Fund Report and Order.

A revision to the currently approved information collection requirements under OMB 3060-1291 is necessary in order to remove a requirement that applies only to the annual reports that must be filed by competitive ETCs receiving legacy high-cost support for mobile wireless services information requirement, which was inadvertently included in the information collection under OMB 3060-1291 as previously approved by OMB.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024-13821 Filed 6-24-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 10:50 a.m. on Thursday, June 20, 2024.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's supervision, corporate, and resolution activities. In calling the meeting, the Board determined, on motion of Director Michael J. Hsu (Acting Comptroller of the Currency), seconded by Vice Chairman Travis J. Hill, and concurred in by Chairman Martin J. Gruenberg, Director Jonathan P. McKernan, and Director Rohit Chopra (Director, Consumer Financial Protection Bureau) that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A), (c)(9)(B), and (10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A), (c)(9)(B)), and (10).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202-898-8748.

Dated this the 20th day of June, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-13951 Filed 6-21-24; 11:15 am]

BILLING CODE 6714-01-P

FEDERAL HOUSING FINANCE AGENCY**[No. 2024–N–8]****Proposed Collection; Comment Request****AGENCY:** Federal Housing Finance Agency.**ACTION:** 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comment on a generic information collection called the “National Survey of Mortgage Originations” (NSMO). FHFA intends to submit the information collection to OMB for review and approval of a three-year control number.

DATES: Interested persons may submit comments on or before August 26, 2024.

ADDRESSES: Submit comments to FHFA, identified by “Proposed Collection; Comment Request: ‘National Survey of Mortgage Originations, (No. 2024–N–8)’” by any of the following methods:

- *Agency Website:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: “National Survey of Mortgage Originations, (No. 2024–N–8).”

FHFA will post all public comments on the FHFA public website at <http://www.fhfa.gov>, except as described below. Commenters should submit only information that the commenter wishes to make available publicly. FHFA may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. FHFA may, in its discretion, redact or refrain from posting all or any portion of any comment that contains content that is obscene, vulgar, profane, or threatens harm. All comments, including those that are redacted or not posted, will be retained in their original form in FHFA’s internal file and

considered as required by all applicable laws. Commenters that would like FHFA to consider any portion of their comment exempt from disclosure on the basis that it contains trade secrets, or financial, confidential or proprietary data or information, should follow the procedures in section IV.D. of FHFA’s Policy on Communications with Outside Parties in Connection with FHFA Rulemakings, *see* https://www.fhfa.gov/sites/default/files/documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf. FHFA cannot guarantee that such data or information, or the identity of the commenter, will remain confidential if disclosure is sought pursuant to an applicable statute or regulation. *See* 12 CFR 1202.8, 12 CFR 1214.2. and <https://www.fhfa.gov/about/foia-reference-guide> for additional information.

SUPPLEMENTARY INFORMATION:**A. Need For and Use of the Information Collection**

The NSMO is a recurring quarterly survey of individuals who have recently obtained a loan secured by a first mortgage on single-family residential property. The survey questionnaire is mailed to a representative sample of approximately 6,000 recent mortgage borrowers each calendar quarter and typically consists of about 96 multiple choice and short answer questions designed to obtain information about borrowers’ experiences in choosing and in taking out a mortgage. The questionnaire may be completed either on paper (in English only) or electronically online (in either English or Spanish). FHFA is also seeking clearance to pretest future iterations of the survey questionnaire and related materials from time to time through the use of cognitive pre-testing.

The NSMO is a component of the “National Mortgage Database” (NMDB) Program which is a joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB). The NMDB Program is designed to satisfy the Congressionally-mandated requirements of section 1324(c) of the Federal Housing Enterprises Financial Safety and Soundness Act.¹ Section 1324(c) requires that FHFA conduct a monthly survey to collect data on the characteristics of individual prime and subprime mortgages, and on the borrowers and properties associated with those mortgages, in order to enable it to prepare a detailed annual report on the mortgage market activities of the Federal National Mortgage Association (Fannie Mae) and the Federal Home

Loan Mortgage Corporation (Freddie Mac) for review by the appropriate Congressional oversight committees. Section 1324(c) also authorizes and requires FHFA to compile a database of otherwise unavailable residential mortgage market information and to make that information available to the public in a timely fashion.

As a means of fulfilling those and other statutory requirements, as well as to support policymaking and research regarding the residential mortgage markets, FHFA and CFPB jointly established the NMDB Program in 2012. The Program is designed to provide comprehensive information about the U.S. mortgage market and has three primary components: (1) the NMDB; (2) the NSMO; and (3) the American Survey of Mortgage Borrowers (ASMB).

The NMDB is a de-identified loan-level database of closed-end first-lien residential mortgage loans that is representative of the market as a whole, contains detailed loan-level information on the terms and performance of the mortgages and the characteristics of the associated borrowers and properties, is continually updated, has an historical component dating back to 1998, and provides a sampling frame for surveys to collect additional information. The core data in the NMDB are drawn from a random 1-in-20 sample of all closed-end first-lien mortgage files outstanding at any time between January 1998 and the present in the files of Experian, one of the three national credit repositories, with a random sample of mortgages newly reported to Experian added each quarter.

The NMDB draws additional information on mortgages in the NMDB datasets from other existing sources, including the Home Mortgage Disclosure Act (HMDA) data that are maintained by the Federal Financial Institutions Examination Council (FFIEC), property valuation models, and administrative data files maintained by Fannie Mae and Freddie Mac and by federal agencies. FHFA also obtains data from the ASMB, which historically solicited information on borrowers’ experience with maintaining their existing mortgages, including their experience maintaining mortgages under financial stress, their experience in soliciting financial assistance, their success in accessing federally-sponsored programs designed to assist them, and, where applicable, any challenges they may have had in terminating a mortgage loan.²

¹ 12 U.S.C. 4544(c).

² OMB has assigned the ASMB control no. 2590–0015, which expires on July 31, 2025.

While the ASMB focused on borrowers' experience with maintaining existing mortgages, the NSMO solicits information on newly-originated mortgages and the borrowers' experiences with the mortgage origination process. It was developed to complement the NMDB by providing critical and timely information—not available from existing sources—on the range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics of borrowers for these types of loans. In particular, the survey questionnaire is designed to elicit directly from mortgage borrowers information on the characteristics of the borrowers and on their experiences in finding and obtaining a mortgage loan, including: their mortgage shopping behavior; their mortgage closing experiences; their expectations regarding house price appreciation; and critical financial and other life events affecting their households, such as unemployment, expenses or divorce. The survey questions do not focus on the terms of the borrowers' mortgage loans because these fields are available in the Experian data. However, the NSMO collects a limited amount of information on each respondent's mortgage to verify that the Experian records and survey responses pertain to the same mortgage.

Each wave of the NSMO is sent to the primary borrowers on about 6,000 mortgage loans, which are drawn from a simple random sample of the newly originated mortgage loans that are added to the National Mortgage Database from the Experian files each quarter. Because the volume of originations varies across time, the sampling rate for the 6,000 sampled loans also varies from one quarter to the next. On average, the NSMO sample represents an approximately 1-in-15 sample of loans added to the National Mortgage Database and an approximately 1-in-300 sample of all mortgage loan originations. By contract with FHFA, the conduct of the NSMO is administered through Experian, which has subcontracted the survey administration through a competitive process to Westat, a nationally-recognized survey vendor.³ Westat also carries out the pre-testing of the survey materials.

B. Need For and Use of the Information Collection

FHFA views the NMDB Program as a whole, including the NSMO, as the monthly "survey" that is required by section 1324 of the Safety and Soundness Act. Core inputs to the NMDB, such as a regular refresh of the Experian data, occur monthly, though NSMO itself does not. In combination with the other information in the NMDB, the information obtained through the NSMO is used to prepare the report to Congress on the mortgage market activities of Fannie Mae and Freddie Mac that FHFA is required to submit under section 1324, as well as for research and analysis by FHFA and CFPB in support of their regulatory and supervisory responsibilities related to the residential mortgage markets. The NSMO is especially critical in ensuring that the NMDB contains uniquely comprehensive information on the range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed and the characteristics—and particularly the creditworthiness—of borrowers for these types of loans.

Since November 2018 FHFA and CFPB have periodically released loan-level datasets collected through the NSMO for public use. Each release incrementally adds loans collected from additional waves of the survey. The most recent release was in March 2023 covering loans originated through 2020.⁴ Prior to each release, FHFA and the CFPB implement a series of disclosure avoidance analyses and protections to ensure that the confidentiality of study participants is protected. The loan-level datasets provide a resource for research and analysis by federal agencies, by Fannie Mae and Freddie Mac, and by academics and other interested parties outside of the government.

FHFA is also seeking OMB approval to continue to conduct cognitive pre-testing of the survey materials. The Agency uses information collected through that process to assist in drafting and modifying the survey questions and instructions, as well as the related communications, to read in the way that will be most readily understood by the survey respondents and that will be most likely to elicit usable responses. Such information is also used to help the Agency decide on how best to organize and format the survey questionnaires.

FHFA previously maintained a standard clearance for this information collection, the OMB control number for that clearance was 2590–0012.

C. Burden Estimate

FHFA has analyzed the hour burden on members of the public associated with conducting the survey (10,080 hours) and with pre-testing the survey materials (50 hours) and estimates the total annual hour burden imposed on the public by this information collection to be 10,130 hours. The estimate for each phase of the collection was calculated as follows:

I. Conducting the Survey

FHFA estimates that the NSMO questionnaire will be sent to 24,000 recipients annually (6,000 recipients per quarterly survey $\times$ 4 calendar quarters). Although, based on historical experience, the Agency expects that only 20 to 30 percent of those surveys will be returned, it has assumed that all of the surveys will be returned for purposes of this burden calculation. Based on the reported experience of respondents to prior NSMO questionnaires, FHFA estimates that it will take each respondent 25 minutes to complete the survey, including the gathering of necessary materials to respond to the questions. This results in a total annual burden estimate of 10,080 hours for the survey phase of this collection (24,000 respondents $\times$ 25 minutes per respondent = 10,080 hours annually).

II. Pre-Testing the Materials

FHFA estimates that it will pre-test the survey materials with 50 cognitive testing participants annually. The estimated participation time for each participant is one hour, resulting in a total annual burden estimate of 50 hours for the pre-testing phase of the collection (50 participants $\times$ 1 hour per participant = 50 hours annually).

D. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use

³ The Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, requires that the survey process, because it utilizes borrower names and addresses drawn from credit reporting agency records, must be administered through Experian in order to maintain consumer privacy.

⁴ The March 2023 NSMO public use dataset can be accessed here: https://www.fhfa.gov/DataTools/Downloads/Pages/NMDB_Data_Sets.aspx.

of automated collection techniques or other forms of information technology.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

[FR Doc. 2024–13902 Filed 6–24–24; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2024–N–7]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA, or Agency) is seeking public comment concerning an information collection known as the “American Survey of Mortgage Borrowers (ASMB),” which has been assigned control number 2590–0015 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire July 31, 2025.

DATES: Interested persons may submit comments on or before July 25, 2024.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: OIRA_submission@omb.eop.gov. Please also submit comments to FHFA, identified by “Proposed Collection; Comment Request: ‘American Survey of Mortgage Borrowers, (No. 2024–N–7)’” by any of the following methods:

- *Agency Website:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request:

“American Survey of Mortgage Borrowers, (No. 2024–N–7).” Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FHFA will post all public comments on the FHFA public website at <http://www.fhfa.gov>, except as described below. Commenters should submit only information that the commenter wishes to make available publicly. FHFA may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. FHFA may, in its discretion, redact or refrain from posting all or any portion of any comment that contains content that is obscene, vulgar, profane, or threatens harm. All comments, including those that are redacted or not posted, will be retained in their original form in FHFA’s internal file and considered as required by all applicable laws. Commenters that would like FHFA to consider any portion of their comment exempt from disclosure on the basis that it contains trade secrets, or financial, confidential or proprietary data or information, should follow the procedures in section IV.D. of FHFA’s *Policy on Communications with Outside Parties in Connection with FHFA Rulemakings*, see https://www.fhfa.gov/sites/default/files/documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf. FHFA cannot guarantee that such data or information, or the identity of the commenter, will remain confidential if disclosure is sought pursuant to an applicable statute or regulation. See 12 CFR 1202.8, 12 CFR 1214.2. and <https://www.fhfa.gov/about/foia-reference-guide> for additional information.

FOR FURTHER INFORMATION CONTACT:

Jonathan Spader, Manager, National Mortgage Database Program, Jonathan.Spader@fhfa.gov, (202) 649–3213; or Angela Supervielle, Senior Counsel, Angela.Supervielle@fhfa.gov, (202) 649–3973, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

FHFA is seeking OMB clearance under the PRA for a collection of information known as the “American Survey of Mortgage Borrowers” (ASMB). The ASMB, conducted annually or biennially, is a voluntary survey of individuals who currently have a first mortgage loan secured by single-family residential property.

FHFA is also seeking clearance to conduct cognitive testing interviews that pre-test iterations of the survey questionnaire and related materials from time to time. The Agency uses information collected through that process to assist in drafting and modifying the survey questions and instructions, as well as the related communications, to read in the way that will be most readily understood by the survey respondents and that will be most likely to elicit usable responses. Such information is also used to help the Agency decide on how best to organize and format the survey questionnaires.

The American Survey of Mortgage Borrowers is a component of the “National Mortgage Database” (NMDB®) Program, which is a joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB) (jointly, “the agencies”). The NMDB Program is designed to satisfy the Congressionally-mandated requirements of section 1324(c) of the Federal Housing Enterprises Financial Safety and Soundness Act.¹ Section 1324(c) requires that FHFA conduct a monthly survey to collect data on the characteristics of individual prime and subprime mortgages, and on the borrowers and properties associated with those mortgages, in order to enable it to prepare a detailed annual report on the mortgage market activities of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for review by the appropriate Congressional oversight committees. Section 1324(c) also authorizes and requires FHFA to compile a database of otherwise unavailable residential mortgage market information and to make that information available to the public in a timely fashion.

As a means of fulfilling those and other statutory requirements, as well as to support policymaking and research regarding the residential mortgage markets, FHFA and CFPB jointly established the NMDB Program in 2012. The Program is designed to provide comprehensive information about the

¹ 12 U.S.C. 4544(c).

U.S. mortgage market and has three primary components: (1) the NMDB; (2) the quarterly National Survey of Mortgage Originations (NSMO); and (3) the ASMB.

The NMDB is a de-identified loan-level database of closed-end first-lien residential mortgage loans that is representative of the market as a whole, contains detailed loan-level information on the terms and performance of the mortgages and the characteristics of the associated borrowers and properties, is continually updated, has a historical component dating back to 1998, and provides a sampling frame for surveys to collect additional information. The core data in the NMDB are drawn from a random 1-in-20 sample of all closed-end first-lien mortgages outstanding at any time between January 1998 and the present in the files of Experian, one of the three national credit repositories, with a random sample of mortgages newly reported to Experian added each quarter.

The NMDB draws additional information on mortgages in the NMDB datasets from other existing sources, including Home Mortgage Disclosure Act (HMDA) data that are maintained by the Federal Financial Institutions Examination Council (FFIEC), property valuation models, and administrative data files maintained by Fannie Mae and Freddie Mac and by federal agencies. FHFA also obtains data from the two surveys conducted as part of the program—the NSMO and the ASMB. The NSMO is a quarterly survey that provides critical and timely information on newly-originated mortgages and associated borrowers that are not available from other sources, including: the range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics of borrowers for these types of loans.²

While the NSMO provides information on newly-originated mortgages, the purpose of the ASMB is to collect voluntary feedback directly from mortgage borrowers about their experience with their mortgage and property. ASMB respondents are representative of the overall population of borrowers with a mortgage loan, including those who recently took out a loan and those who have had their loan for multiple years. The feedback collected by the ASMB includes information about a range of topics related to maintaining a mortgage and

property, such as borrowers' experiences with managing their mortgage, responding to financial stressors, insuring against risks, seeking assistance from federally-sponsored programs and other sources, and terminating a mortgage loan.

From 2016 through 2018, the ASMB questionnaire was sent once annually to a stratified random sample of 10,000 borrowers with mortgages in the NMDB. FHFA did not undertake the ASMB during 2019 but sent the survey again in the fall of 2020 with a specific focus on the experiences of borrowers during the COVID-19 pandemic using a stratified random sample of 10,000 borrowers. The 2020 survey was substantially similar to the 2018 survey, except it included a number of questions specifically relating to the COVID-19 pandemic and its effects. The 2022 survey was similar to the 2020 survey in its focus on how the pandemic impacted borrowers and extended the focus to the experiences of those who used forbearance. The 2023 survey focused on mortgage borrowers' experiences with flood risk and flood insurance. In 2023, the ASMB had a 27 percent overall response rate from its stratified random sample of 10,000 borrowers with mortgages in the NMDB. The 2024 ASMB survey will focus on existing borrowers' experiences with higher mortgage rates and non-mortgage costs like insurance and property maintenance.

When fully processed, the information collected through the ASMB will be used, in combination with information obtained from existing sources in the NMDB, to assist FHFA in understanding how the performance of existing mortgages is influencing the residential mortgage market, including how existing borrowers are affected by higher interest rates, the extent to which existing borrowers' are experiencing higher non-mortgage costs, borrowers' understanding and management of escrow accounts, and how these factors influence mortgage performance and homeownership outcomes. This important, but otherwise unavailable, information will assist FHFA in the supervision of its regulated entities (Fannie Mae, Freddie Mac, and the Federal Home Loan Banks) and in the development and implementation of appropriate and effective policies and programs. The information will also be used for research and analysis by CFPB and other federal agencies that have regulatory and supervisory responsibilities/mandates related to mortgage markets and to provide a resource for research and analysis by

academics and other interested parties outside of the government.

B. Burden Estimate

This information collection comprises two components: (1) the ASMB survey; and (2) the pre-testing of future survey questionnaires and related materials through the use of cognitive testing. FHFA conducted the survey annually from 2016 through 2018 and again in 2020, 2022, and 2023, but did not conduct the survey in 2019 nor 2021. FHFA assumes that it will conduct the survey once annually over the next three years and that it will conduct two rounds of pre-testing on each year of survey materials.

FHFA has analyzed the total hour burden on members of the public associated with conducting the survey (4,200 hours) and with pre-testing the survey materials (24 hours) and estimates the total annual hour burden imposed on the public by this information collection to be 4,224 hours for each annual survey. The estimate for each phase of the collection was calculated as follows:

I. Conducting the Survey

FHFA estimates that the ASMB questionnaire will be sent to 10,000 recipients each time it is conducted. Although it expects that only 20 to 30 percent of those surveys will be returned, FHFA has calculated the burden estimates below as if all of the surveys will be returned. Based on the reported experience of respondents to earlier ASMB questionnaires, FHFA estimates that it will take each respondent 25 minutes to complete each survey, including the gathering of necessary materials to respond to the questions. This results in a total annual burden estimate of 4,200 hours for the survey phase of this collection (1 survey per year $\times$ 10,000 respondents per survey $\times$ 25 minutes per respondent = 4,200 hours).

II. Pre-Testing the Materials

FHFA estimates that it will sponsor 2 rounds of 12 cognitive interviews prior to conducting each annual survey for a total of 24 cognitive interview participants. It estimates the participation time for each cognitive interview participant to be one hour, resulting in a total annual burden estimate of 24 hours for the pre-testing phase of the collection (2 focus groups per year $\times$ 12 participants in each group $\times$ 1 hour per participant = 24 hours).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an

² OMB has cleared the NSMO under the PRA and assigned it control no. 2590-0012, which expires on June 30, 2026.

initial notice and request for public comments regarding this information collection in the **Federal Register** on February 28, 2024.³ The 60-day comment period closed on April 29, 2024. FHFA received no comments.

FHFA requests written comments on the following: (1) Whether the collection

of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

BILLING CODE 8070-01-P

³ See 89 FR 14650 (Feb. 28, 2024).



Homeowner Costs and Expectations

American Survey of Mortgage Borrowers

The best way to learn about the experiences of mortgage borrowers today is to hear directly from you.

The survey may be completed in one of two ways, online or you can complete the paper survey and return it in the postage paid envelope.

To complete the survey online, in English or Spanish

Go to: www.ASMBsurvey.com

Enter your unique access code provided in the letter we sent you.

Para contestar la encuesta por Internet en inglés o en español

Vaya a: www.ASMBsurvey.com

Ingrese el código de acceso único que se le envió en la carta.

If you have any questions, please call us toll free 1-855-531-0724 or visit our websites, www.fhfa.gov/ASMB or consumerfinance.gov.

American Survey of Mortgage Borrowers

WHO ARE THE SURVEY SPONSORS?

The **Federal Housing Finance Agency (FHFA)** is an independent regulatory agency responsible for the effective supervision, regulation, and housing mission oversight of **Fannie Mae, Freddie Mac**, the **Federal Home Loan Bank System**, and the **Office of Finance**, and ensures a competitive, liquid, efficient, and resilient housing finance market.

The **Consumer Financial Protection Bureau (CFPB)** is a Federal agency created in 2010 to make mortgages, credit cards, automobile and other consumer loans work better and ensure that these markets are fair, transparent, and competitive.

HOW WERE YOU SELECTED?

Survey recipients were selected at random from across the United States. Your answers will not be connected to your name or any other identifying information.

HOW LONG WILL IT TAKE?

The time will vary based on your experiences, but you can expect to spend 15-25 minutes.

Privacy Act Notice: In accordance with the Privacy Act, as amended (5 U.S.C. § 552a), the following notice is provided. The information requested on this survey is collected pursuant to 12 U.S.C. § 4544 for the purposes of gathering information for the National Mortgage Database. Routine uses which may be made of the collected information can be found in the Federal Housing Finance Agency's System of Records Notice (SORN) FHFA-21 National Mortgage Database. Providing the requested information is voluntary. Submission of the survey authorizes FHFA to collect the information provided and to disclose it as set forth in the referenced SORN.

Paperwork Reduction Act Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB No. XXXX-XXXX

Expires xx/xx/xxxx

Your Mortgage Today**1. Do you currently have a mortgage loan?**

- ☐ Yes, I have at least one mortgage loan
- ☐ No, I do not have a mortgage loan on any property **→ Skip to 68 on page 7**

2. Which one of these reasons best describes why you took out this mortgage? *If you have more than one mortgage loan, answer about the mortgage on your primary residence. If you don't have a mortgage on your primary residence, answer about a mortgage on another property.*

- ☐ To buy a property
- ☐ To refinance or modify an earlier mortgage
- ☐ To add/remove co-signer(s)/co-owner(s)
- ☐ To finance a construction loan
- ☐ To take out a new loan on a mortgage-free property
- ☐ Some other purpose (specify) _____

3. When did you take out this mortgage?

_____/_____
month year

4. Did we mail this survey to the address of the property you financed with this mortgage?

- ☐ Yes
- ☐ No

5. Who signed or co-signed for this mortgage?

Mark all that apply.

- ☐ I signed
- ☐ Spouse/partner including a former spouse/partner
- ☐ Parents
- ☐ Children
- ☐ Other relatives
- ☐ Other (e.g., friend, business partner)

6. When you took out this mortgage, what was the dollar amount you borrowed?

\$ _____ .00 ☐ Don't know

7. What was the interest rate on this mortgage?

_____ % ☐ Don't know

8. Is the current interest rate on your mortgage higher or lower than the mortgage rates lenders are offering today?

- ☐ A lot higher
- ☐ A little higher
- ☐ About the same
- ☐ A little lower
- ☐ A lot lower

☐ Don't know

9. How do you think the mortgage rates offered by lenders will change in the next two years?

- ☐ Increase a lot
- ☐ Increase a little
- ☐ Stay about the same
- ☐ Decrease a little
- ☐ Decrease a lot

☐ Don't know

Property Associated with this Mortgage**10. When did you first become the owner of the property associated with this mortgage?**

_____/_____
month year

11. What was the purchase price of this property, or if you built it, how much did the construction and land cost?

\$ _____ .00 ☐ Don't know

12. Which one of the following best describes this property?

- ☐ Single-family detached house
- ☐ Mobile home or manufactured home
- ☐ Townhouse, row house, or villa
- ☐ 2-unit, 3-unit, or 4-unit dwelling
- ☐ Condo, co-op, or apartment in a building with 5 or more units
- ☐ Unit in a partly commercial structure
- ☐ Other (specify) _____

13. When was this property built?

- ☐ 2020 or later
- ☐ 2010 – 2019
- ☐ 2000 – 2009
- ☐ 1990 – 1999
- ☐ 1980 – 1989
- ☐ 1970 – 1979
- ☐ 1960 – 1969
- ☐ 1950 – 1959
- ☐ Earlier than 1950

14. How much do you think this property would sell for today?

\$ _____ .00 ☐ Don't know

15. What do you think will happen to the prices of homes in this property's neighborhood over the next two years?

- ☐ Increase a lot
- ☐ Increase a little
- ☐ Stay about the same
- ☐ Decrease a little
- ☐ Decrease a lot

16. How would you describe the physical condition of this property?

- ☐ Excellent
- ☐ Very good
- ☐ Good
- ☐ Fair
- ☐ Poor

17. How many bedrooms and bathrooms are in this property/your unit?

_____ Bedrooms
_____ Bathrooms

18. In general, how satisfied are you with this property?

- ☐ Very satisfied
- ☐ Somewhat satisfied
- ☐ Neither satisfied nor dissatisfied
- ☐ Somewhat dissatisfied
- ☐ Very dissatisfied

19. In the last two years, have you considered selling this property?

- ☐ Yes
- ☐ No

20. Do any of the following describe why you did not sell this property?

	Yes	No
Mortgage has a low interest rate	☐	☐
Happy with the property or location	☐	☐
Close to family and friends	☐	☐
Close to job	☐	☐
Could not find another property to buy	☐	☐
Difficult to qualify for new mortgage	☐	☐
☐ N/A – none of the above		

21. When do you think you might sell this property, if at all?

- ☐ Currently trying to sell
- ☐ 1-2 years
- ☐ 3-4 years
- ☐ 5-6 years
- ☐ 7-8 years
- ☐ 9-10 years
- ☐ More than 10 years
- ☐ Do not expect to sell

22. If mortgage rates offered by lenders decreased significantly, would you be more or less likely to:

	More Likely	No Change	Less Likely
Refinance this mortgage	☐	☐	☐
Borrow against this property's equity	☐	☐	☐
Sell this property	☐	☐	☐
Buy a new property	☐	☐	☐
Move within the area (less than 50 miles)	☐	☐	☐
Move to a new area (more than 50 miles)	☐	☐	☐
Renovate this property	☐	☐	☐

Your Mortgage Payment

23. What is the required monthly mortgage payment on this property including the amount paid into escrow if applicable?

\$ _____ .00 ☐ Don't know

24. Does this monthly mortgage payment include any of the following?

	Yes	No
Property taxes	☐	☐
Homeowners insurance	☐	☐
Separate insurance for flood, earthquake, or windstorm	☐	☐
Private mortgage insurance (PMI)	☐	☐
HOA/condo/coop association fees	☐	☐

25. Has your required mortgage payment for this property changed in the last two years?

- ☐ Yes, it increased
☐ Yes, it decreased
☐ No
☐ Don't know

Skip to 28

26. In the last two years, how much was the change in your required monthly mortgage payment for this property?

- ☐ Less than \$100
☐ \$100-\$199
☐ \$200-\$299
☐ \$300-\$399
☐ \$400-\$499
☐ \$500 or more
☐ Don't know

27. In the last two years, has your mortgage payment changed for any of the following reasons?

	Increased	No Change	Decreased	Don't Know	N/A
Interest rate	☐	☐	☐	☐	☐
Private Mortgage Insurance (PMI)	☐	☐	☐	☐	☐
Property taxes	☐	☐	☐	☐	☐
Homeowners insurance	☐	☐	☐	☐	☐

Your Total Housing Costs

28. What is the annual cost for property taxes on this property?

\$ _____ .00 ☐ Don't know

29. What is the annual cost for the homeowners insurance on this property? *Do not include the cost of flood, earthquake, or windstorm insurance that is covered by a separate policy.*

\$ _____ .00 ☐ Don't know

30. In the last two years, have you done any of the following with your homeowners insurance on this property?

	Yes	No
Got price quotes to consider changing insurance providers	☐	☐
Changed insurance providers	☐	☐
Reduced my coverage or increased my deductible	☐	☐
Filed a claim	☐	☐
Got a discount for making retrofits or property improvements that reduce risk	☐	☐

31. In the last two years, have you encountered any of the following challenges with your homeowners insurance on this property?

	Yes	No
Difficulty finding an insurance company that would cover this property	☐	☐
Could only get insurance from a state-sponsored plan or insurer of last resort	☐	☐
Insurance company canceled my policy	☐	☐
Claim was rejected	☐	☐
Claim did not cover the full cost of repairs	☐	☐
Difficulty getting assistance or poor customer service	☐	☐
Documents or assistance were not available in my preferred language	☐	☐

32. Do you have a separate policy for flood, earthquake, or windstorm insurance in addition to homeowners insurance?
Mark all that apply.

☐ Flood insurance
☐ Earthquake insurance
☐ Windstorm insurance

☐ No

☐ Don't know

Skip to 36

33. What is the total annual cost for your flood, earthquake, and/or windstorm insurance?

\$ _____ .00 ☐ Don't know

34. In the last two years, have any of the following happened with your flood, earthquake, and/or windstorm insurance on this property?

	Yes	No
Got price quotes to consider changing insurance providers	☐	☐
Changed insurance providers	☐	☐
Reduced my coverages or increased my deductible	☐	☐
Filed a claim	☐	☐
Got a discount for making retrofits or improvements that reduce risk	☐	☐

35. In the last two years, have you encountered any of the following challenges with your flood, earthquake, and/or windstorm insurance on this property?

	Yes	No
Difficulty finding an insurance company that would cover this property	☐	☐
Could only get insurance from a state-sponsored plan or insurer of last resort	☐	☐
Insurance company canceled my policy	☐	☐
Claim was rejected	☐	☐
Claim did not cover the full cost of repairs	☐	☐
Difficulty getting assistance or poor customer service	☐	☐
Documents or assistance were not available in my preferred language	☐	☐

36. Is this property part of a condo, co-op, or homeowners association (HOA)?

☐ Yes

☐ No → Skip to 40

37. What is the monthly association fee?

\$ _____ .00 ☐ Don't know

38. In the last 12 months, has your association required any special assessments or additional payments?

☐ Yes

☐ No → Skip to 40

39. What was the total amount of the special assessments and additional payments?

\$ _____ .00 ☐ Don't know

40. In the last two years, how did the cost of the following change for this property?

	Increased A Lot	Increased A Little	Same or Decreased	Don't Know	N/A
Property taxes	☐	☐	☐	☐	☐
Homeowners insurance	☐	☐	☐	☐	☐
Flood insurance	☐	☐	☐	☐	☐
Earthquake insurance	☐	☐	☐	☐	☐
Windstorm insurance	☐	☐	☐	☐	☐
HOA/condo/coop fees	☐	☐	☐	☐	☐

41. In the next two years, how do you expect the cost of the following to change for this property?

	Increase A Lot	Increase A Little	Same or Decrease	Don't Know	N/A
Property taxes	☐	☐	☐	☐	☐
Homeowners insurance	☐	☐	☐	☐	☐
Flood insurance	☐	☐	☐	☐	☐
Earthquake insurance	☐	☐	☐	☐	☐
Windstorm insurance	☐	☐	☐	☐	☐
HOA/condo/coop fees	☐	☐	☐	☐	☐

42. Do you currently have an escrow account for this property?

- ☐ Yes
☐ No escrow account
☐ Don't know

Skip to 45

43. In the last two years, did your servicer notify you of a shortage of funds or deficiency in your escrow account?

- ☐ Yes, I paid a lump sum to resolve it
☐ Yes, monthly payment was increased
☐ No

☐ Don't know

44. In the last two years, have you had any of the following challenges with the escrow account for this property?

	Yes	No
Servicer made delayed or incorrect payments for taxes, insurance etc.	☐	☐
Servicer made other mistakes	☐	☐
Paid added fees or costs due to mistakes made by the servicer	☐	☐
Did not receive advanced notice about a change to required escrow payment	☐	☐
Servicer purchased insurance for me (force-placed insurance)	☐	☐
Had difficulty getting assistance or poor customer service	☐	☐
Documents or assistance were not available in my preferred language	☐	☐

Accessing This Property's Equity

45. In the last two years, have you borrowed against the equity in this property using any of the following? *Mark all that apply.*

- ☐ Home equity loan or line of credit
☐ Cashout refinance
☐ Did not borrow against the equity Skip to 48

46. What was the total amount you borrowed?

If a cashout refinance, how much cash did you get?

- ☐ Less than \$5,000
☐ \$5,000-\$9,999
☐ \$10,000-\$19,999
☐ \$20,000-\$49,999
☐ \$50,000-\$99,999
☐ \$100,000 or more
☐ Don't know

47. Did you use the money you borrowed for any of the following?

	Yes	No
College expenses	☐	☐
Auto or other major purchase	☐	☐
Buy out co-signer(s)/co-owners(s)	☐	☐
Pay off other bills or debts	☐	☐
Home repairs, renovations, or improvements	☐	☐
Savings	☐	☐
Closing costs of new mortgage	☐	☐
Business or investment	☐	☐
Routine living expenses	☐	☐
Other (specify) _____	☐	☐

Property Repairs & Improvements

48. In the last two years, have you done repairs or home improvements to any of the following for this property? *HOA/condo/coop: do not include repairs to shared spaces.*

	Yes	No
Building systems: plumbing, heating, etc.	☐	☐
Kitchen or bathrooms	☐	☐
Other interior living spaces	☐	☐
Foundation, roof, or home exterior	☐	☐
Deck, porch, or yard	☐	☐
Built new addition or added living space	☐	☐
Energy efficiency upgrades (solar panels, heat pump, etc.)	☐	☐
Retrofits to better protect against natural disasters	☐	☐
Other (specify) _____	☐	☐

☐ No repairs/improvements made ➡ Skip to 54

49. What was the total cost of all repairs and improvements to this property in the last two years?

- ☐ \$100 or less
☐ \$100-\$999
☐ \$1,000-\$4,999
☐ \$5,000-\$9,999
☐ \$10,000-\$19,999
☐ \$20,000-\$49,999
☐ \$50,000 or more

50. Compared to prior years, was the total amount spent for this property...

- ☐ A lot higher
☐ A little higher
☐ About the same
☐ A little lower
☐ A lot lower

☐ N/A – owned less than two years

51. Did you use any of the following to pay for the repairs and improvements?

	Yes	No
Savings or cash	☐	☐
Loan from family or friends	☐	☐
Credit card paid off over time	☐	☐
Home equity loan or line of credit	☐	☐
Financing through the contractor	☐	☐
Reimbursement from an insurance claim	☐	☐
Other loan or financing	☐	☐

52. How much of these costs were due to unexpected repairs?

- ☐ All
☐ Most
☐ Some
☐ None

53. Were any of these costs because of damage from a major weather event or natural disaster?

- ☐ Yes
☐ No

54. Does this property currently need any repairs?

- ☐ Yes
☐ No
☐ Don't know
- Skip to 57

55. What is your best guess of what those repairs would cost?

- ☐ Less than \$100
☐ \$100-\$999
☐ \$1,000-\$4,999
☐ \$5,000-\$9,999
☐ \$10,000-\$19,999
☐ \$20,000-\$49,999
☐ \$50,000 or more

56. Are any of the following reasons you have not made those repairs?

	Yes	No
Could not afford it	☐	☐
Could not find a contractor	☐	☐
Waiting for the cost of materials or labor to come down	☐	☐
Could not get approved for financing	☐	☐
Waiting for the interest rate on financing to come down	☐	☐
Haven't had time	☐	☐
Waiting a little longer, repairs aren't urgent	☐	☐

Property Uses

57. Which one of the following best describes how you use this property today?

- ☐ Primary residence (*where you spend the majority of your time*) → Skip to 61
☐ Seasonal or second home
☐ Home for other relatives
☐ Rental or investment property
☐ Vacant or currently for sale
☐ Other (specify) _____

58. Have you previously lived in this property as your primary residence?

- ☐ Yes
☐ No → Skip to 60

59. When did you move out of this property?

- ☐ Within the last 2 years
☐ 3-4 years ago
☐ 5-6 years ago
☐ 7-8 years ago
☐ 9-10 years ago
☐ More than 10 years ago

60. Do you own or rent your current primary residence?

- ☐ Own with a mortgage
☐ Own free and clear (no mortgage)
☐ Rent
☐ Other _____

61. Do you own any other properties?

- ☐ Yes
☐ No → Skip to 68

62. Have you previously lived in any of these properties as your primary residence?

- ☐ Yes
☐ No → Skip to 64

63. How long ago did you move out of that property? *If multiple properties, answer for the property you lived in most recently.*

- ☐ Within the last 2 years
☐ 3-4 years ago
☐ 5-6 years ago
☐ 7-8 years ago
☐ 9-10 years ago
☐ More than 10 years ago

64. Which of the following best describes how you use that property today?

- ☐ Seasonal or second home
☐ Home for other relatives
☐ Rental or investment property
☐ Vacant or currently for sale
☐ Other (specify) _____

65. In the last two years, have you considered selling that property?

- ☐ Yes
☐ No

66. Do any of the following describe why you did not sell that property?

	Yes	No
Mortgage has a low interest rate	☐	☐
Happy with the property or location	☐	☐
Close to family and friends	☐	☐
Close to job	☐	☐
Could not find another property to buy	☐	☐
Difficult to qualify for a new mortgage	☐	☐

☐ N/A - none of the above

67. If the mortgage rates offered by lenders decreased significantly, would you be more or less likely to:

	More Likely	No Change	Less Likely
Refinance the mortgage	☐	☐	☐
Sell the property	☐	☐	☐

You and Your Household

68. What is your current marital status?

- ☐ Married
☐ Separated
☐ Never married
☐ Divorced
☐ Widowed

69. Do you have a partner who shares the decision-making and responsibilities of running your household but is not your legal spouse?

- ☐ Yes
☐ No

Please answer the following questions for you and your spouse or partner, if applicable.

70. Age at last birthday:

You	Spouse/ Partner
_____ years	_____ years

71. Highest level of education:

	You	Spouse/ Partner
Some schooling	☐	☐
High school graduate	☐	☐
Technical school	☐	☐
Some college	☐	☐
College graduate	☐	☐
Postgraduate studies	☐	☐

72. Race and/or ethnicity: <i>Mark all that apply.</i> White ☐ Spouse/ Partner ☐ Hispanic or Latino ☐ Black or African American ☐ Asian ☐ Middle Eastern or North African ☐ American Indian or Alaska Native ☐ Native Hawaiian or Pacific Islander ☐	78. Have you teleworked or worked from home in the last month? Every day ☐ Spouse/ Partner ☐ Most days ☐ Some days ☐ No days ☐																					
73. What sex were you (or your spouse/partner) assigned at birth? Male ☐ Spouse/ Partner ☐ Female ☐	79. Ever serve on active duty in the U.S. Armed Forces, Reserves or National Guard? Never served in the military ☐ Spouse/ Partner ☐ Only on active duty for training in the Reserves or National Guard ☐ Now on active duty ☐ On active duty in the past, but not now ☐																					
74. Gender: <i>Mark all that apply.</i> Male ☐ Spouse/ Partner ☐ Female ☐ Transgender, non-binary, or another gender ☐	80. Do you speak a language other than English at home? ☐ Yes ☐ No																					
75. Sexual Orientation: <i>Mark all that apply.</i> Gay or lesbian ☐ Spouse/ Partner ☐ Straight, that is not gay or lesbian ☐ Bisexual ☐ Use a different term (specify) _____ ☐	81. Besides you (and your spouse/partner), who else permanently lives in your home? <i>Mark all that apply.</i> ☐ Children/grandchildren 12 and under ☐ Children/grandchildren 13-18 ☐ Children/grandchildren aged 19 or older ☐ Parents of you or your spouse/partner ☐ Other relatives like siblings or cousins ☐ Non-relatives ☐ No one else																					
76. Current work status: <i>Mark all that apply.</i> Self-employed full time ☐ Spouse/ Partner ☐ Self-employed part time ☐ Employed full time ☐ Employed part time ☐ Retired ☐ Unemployed, temporarily laid-off, furloughed ☐ Not working for pay (student, homemaker, disabled) ☐	82. In the last two years, did any of the following happen? <table border="0"> <tr> <td>Married, remarried or new partner</td> <td>☐ Yes</td> <td>☐ No</td> </tr> <tr> <td>Separated, divorced or partner left</td> <td>☐</td> <td>☐</td> </tr> <tr> <td>Disability of a household member</td> <td>☐</td> <td>☐</td> </tr> <tr> <td>Serious illness of a household member</td> <td>☐</td> <td>☐</td> </tr> <tr> <td>Had a baby or added a new person to household (not spouse/partner)</td> <td>☐</td> <td>☐</td> </tr> <tr> <td>Death of household member</td> <td>☐</td> <td>☐</td> </tr> <tr> <td>Person left household (not spouse/partner)</td> <td>☐</td> <td>☐</td> </tr> </table>	Married, remarried or new partner	☐ Yes	☐ No	Separated, divorced or partner left	☐	☐	Disability of a household member	☐	☐	Serious illness of a household member	☐	☐	Had a baby or added a new person to household (not spouse/partner)	☐	☐	Death of household member	☐	☐	Person left household (not spouse/partner)	☐	☐
Married, remarried or new partner	☐ Yes	☐ No																				
Separated, divorced or partner left	☐	☐																				
Disability of a household member	☐	☐																				
Serious illness of a household member	☐	☐																				
Had a baby or added a new person to household (not spouse/partner)	☐	☐																				
Death of household member	☐	☐																				
Person left household (not spouse/partner)	☐	☐																				
77. How long does it usually take to commute from home to work (one-way)? Less than 15 minutes ☐ Spouse/ Partner ☐ 15-29 minutes ☐ 30-59 minutes ☐ An hour or longer ☐ N/A - no commute ☐																						

83. In the next two years, do you expect any of the following to happen?

	Yes	No
Have a baby or add new person to household	☐	☐
Decrease in household members	☐	☐
Move more than 50 miles away	☐	☐
Retirement (you or spouse/partner)	☐	☐
Change jobs (you or spouse/partner)	☐	☐
Telework less (you or spouse/partner)	☐	☐

84. Approximately how much is your total annual household income from all sources (wages, salaries, tips, interest, child support, investment income, retirement, social security, and alimony)?

- ☐ Less than \$35,000
☐ \$35,000 to \$49,999
☐ \$50,000 to \$74,999
☐ \$75,000 to \$99,999
☐ \$100,000 to \$174,999
☐ \$175,000 or more

85. Does your total annual household income include any of the following sources?

	Yes	No
Wages or salary	☐	☐
Business or self-employment	☐	☐
Interest or dividends	☐	☐
Alimony or child support	☐	☐
Social Security, pension or other retirement benefits	☐	☐

86. Do you or anyone in your household have any of the following?

	Yes	No
401(k), 403(b), IRA, or pension plan	☐	☐
Stocks, bonds, or mutual funds (not in retirement accounts or pension plans)	☐	☐
Certificates of deposit	☐	☐
Investment real estate	☐	☐
Cryptocurrencies	☐	☐

87. Which one of the following statements best describes the amount of financial risk you are willing to take when you save or make investments?

- ☐ Take substantial risks expecting to earn substantial returns
☐ Take above-average risks expecting to earn above-average returns
☐ Take average risks expecting to earn average returns
☐ Not willing to take any financial risks

88. In the last 12 months, how often have you struggled to pay all your bills on time?

- ☐ Almost every month
☐ Some months
☐ A couple of months
☐ Never

89. If your household faced an unexpected personal financial crisis in the next couple of years, how likely is it you could...

	Very	Somewhat	Not At All
Pay your bills for the next 3 months without borrowing	☐	☐	☐
Get significant financial help from family or friends	☐	☐	☐
Borrow a significant amount from a bank or credit union	☐	☐	☐
Significantly increase your income	☐	☐	☐

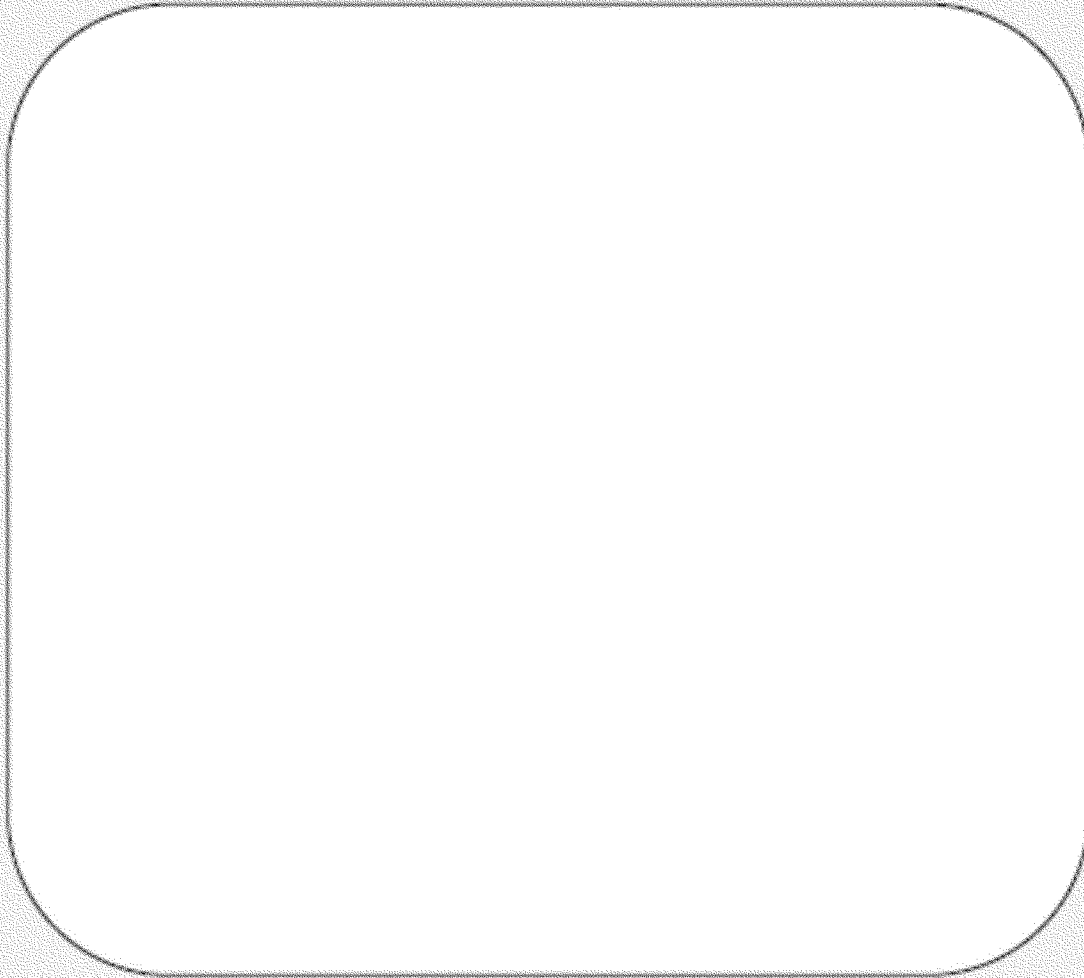
90. In the last two years, how have the following changed?

	Significant Increase	Little/No Change	Significant Decrease
Household income	☐	☐	☐
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

91. Over the next two years, how do you expect the following to change?

	Significant Increase	Little/No Change	Significant Decrease
Household income	☐	☐	☐
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

If you wish to add comments or further explain any of your answers, please do that here.
Do not put your name or address on the questionnaire.



Thank you for completing our survey!

Please use the enclosed business-reply envelope to return your completed questionnaire.

FHFA
1600 Research Blvd, RC B16
Rockville, MD 20850

12 of 12

FEDERAL RESERVE SYSTEM

**Formations of, Acquisitions by, and
Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than July 25, 2024.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to Comments.applications@rich.frb.org:

1. *United Bankshares, Inc.*, Charleston, West Virginia; to acquire Piedmont Bancorp, Inc., and thereby indirectly acquire The Piedmont Bank, both of Peachtree Corners, Georgia.

Board of Governors of the Federal Reserve System.

Erin Cayce,

Assistant Secretary of the Board.

[FR Doc. 2024-13913 Filed 6-24-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[60Day-24-0051; Docket No. ATSDR-2024-0002]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Assessment of Chemical Exposures (ACE) Investigations. The purpose of ACE Investigations is to focus on performing rapid epidemiological assessments to assist State, regional, local, or Tribal health departments (the requesting agencies) to respond to or prepare for acute environmental incidents].

DATES: ATSDR must receive written comments on or before August 26, 2024.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR-2024-0002 by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. ATSDR will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and

Prevention, 1600 Clifton Road, NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: omb@cdc.gov.

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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. 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 submissions of responses; and
5. Assess information collection costs.

Proposed Project

Assessment of Chemical Exposures (ACE) Investigations (OMB Control Number 0923-0051, Exp. 10/31/2024)—Revision—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting to revise the Assessment of Chemical Exposures (ACE) Investigations information collection project and seeks a three-year OMB approval to assist state and local health departments after toxic substance spills or other acute environmental incidents. ATSDR has successfully completed three

investigations to date, and would like to continue this impactful information collection. See below for a brief summary of information collections approved under this tool:

- During 2015, in U.S. Virgin Islands there was a methyl bromide exposure at a condominium resort. Under this ACE investigation, pest control companies were made aware that methyl bromide use is prohibited in homes and other residential settings. Additionally, clinicians were made aware of the toxicologic syndrome caused by exposure to methyl bromide and the importance of notifying first responders immediately when they have encountered contaminated patients.

- During 2016, the ACE team conducted a rash investigation in Flint, Michigan. Persons exposed to Flint municipal water who had current or worsening rashes were surveyed and referred to free dermatologist screening if desired. Findings revealed that when the city was using water from the Flint River, there were large swings in chlorine, pH, and hardness, which could be one possible explanation for the eczema-related rashes.

- During 2016, the ACE team also conducted a follow-up investigation for people who were exposed to the Flint municipal water and sought care from dermatologists. The follow-up interviews resulted in improvement of the exam and referral processes that were still ongoing at the time.

ACE Investigations have focused on performing rapid epidemiological assessments to assist state, regional, local, or tribal health departments (requesting agencies) to respond to or prepare for acute environmental incidents. The main objectives for performing these rapid assessments are to:

- Characterize exposure and acute health effects of the affected community to inform health officials and the community;

- Identify needs (*i.e.*, medical, mental health, and basic) of those exposed during the incidents to aid in planning interventions in the community;

- Determine the sequence of events responsible for the incident so that actions can be taken to prevent future incidents;

- Assess the impact of the incidents on the emergency response and health services used and share lessons learned for use in hospital, local, and state planning for environmental incidents; and

- Identify cohorts that may be followed and assessed for persistent health effects resulting from environmental releases.

Because each incident is different, it is not possible to predict in advance exactly what type of, and how many respondents will be consented and interviewed to effectively evaluate the incident. Respondents typically include, but are not limited to, emergency responders such as police, fire, hazardous material technicians, emergency medical services, and personnel at hospitals where patients from the incident were treated. Incidents may occur at businesses or in the community setting; therefore, respondents may also include business owners, managers, workers, customers, community residents, and those passing through the affected area.

The multidisciplinary ACE Team consisting of staff from ATSDR, the Centers for Disease Control and Prevention (CDC), and the requesting agencies will be collecting data. ATSDR has developed a quickly tailored series of draft survey forms used in the field to collect data that will meet the goals of the investigation. ATSDR collections will be administered based on time permitted and urgency. For example, it is preferable to administer the General Survey to as many respondents as possible. However, if there are time constraints, the shorter Epidemiologic Contact Assessment Symptom Exposure (Epi CASE) Survey, may be administered instead. The individual surveys collect information about exposure, acute health effects, health services use, medical history, needs resulting from the incident, communication during the release, health impact on children, and demographic data. Hospital personnel are asked about the surge, response and communication, decontamination, and lessons learned. Depending on the situation, data collected by face-to-face interviews, telephone interviews, written surveys, mailed surveys, or on-line self-administered surveys can be collected. Medical charts may also be considered for review. In rare situations, an investigation might involve collection of clinical specimens.

ATSDR is proposing to increase the utility of this Generic ICR in response to stakeholder requests. We would also like to broaden who we may assist to include other federal public health agencies. ATSDR proposes revisions to select information collection forms, which will be deployed online or using handheld devices whenever possible to reduce burden, and to adjust the number of responses and time per response for several forms. Because of this addition of online self-administration we are expecting to be able to survey more respondents than

previously done during large disasters. A brief Eligibility Screener will be conducted before the General or Epi CASE survey to make sure they were in the area at the time of the incident, before consenting them to be surveyed. The number of people to be screened will be increased to 2,500 responses per year. The shorter Epi CASE survey has been modified to incorporate the symptom checker showcard into the survey so that it can be easily self-administered online, and questions on functional disabilities were added as requested by stakeholders adding two minutes and 1,000 respondents. The General survey will also have an online option. For simplicity, adolescents will no longer be eligible to take the General Survey and the Child Survey will become a module of the General Survey for adults to answer for their minor children. At stakeholder direction, ATSDR has added modules to the General Survey for responder, pets, and livestock health, and a community resilience qualitative question bank. The General Survey has also added questions requested by stakeholders on functional disabilities and maternal and child health. The two existing long-term mental health screeners are replaced by three shorter versions and the race/ethnicity questions are now consistent with revised OMB Standards. Qualitative questions were added to several sections throughout the survey. These changes add to the time of the survey and the online self-administration option allows for an increase in respondents (60 minutes, 1000 responses annually). The Household Survey will be removed because of little use. The Hospital Survey for emergency department nurses and other health professionals on how they handled the response is unchanged (40 responses per year; 17 hours). We are modifying the Medical Chart Abstraction Form with slight question changes suggested by a medical toxicologist, and by adding functional disability questions and modifying the race/ethnicity questions to the OMB Standard. This results in no change to burden (250 responses per year; 125 hours).

ATSDR anticipates one ACE investigation per year and is requesting OMB approval for 4,815 annual responses and for 1,508 annual burden hours. Participation in ACE investigations is voluntary and there are no anticipated costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of Responses per respondent	Average Burden per response (in hours)	Total burden (in hours)
Residents, first responders, business owners, employees, customers.	Eligibility Screener	2,500	1	2/60	83
	Epi CASE Survey	1,000	1	17/60	283
Hospital staff	General survey	1,000	1	60/60	1,000
	Hospital Survey	40	1	25/60	17
	Medical Chart Abstraction Form.	25	10	30/60	125
Staff from state, local, or tribal health agencies ...					
Total		4,565			1,508

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.*

[FR Doc. 2024–13904 Filed 6–24–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–24AZ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “OD2A: LOCAL Linkage to and Retention in Care Surveillance” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on November 14, 2023, to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

OD2A: LOCAL Linkage to and Retention in Care Surveillance—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, opioid overdose deaths have increased significantly over the years, and drug overdose deaths in the United States increased by 14% from 2020 to 2021. Of the 106,699 drug overdose deaths in 2021, over 75% involved an opioid. Deaths involving psychostimulants, such as methamphetamine, also increased from

2020 to 2021. Scaling up prevention and surveillance activities to address substance misuse and nonfatal and fatal drug overdoses are priorities for the Centers for Disease Control and Prevention (CDC). Evidence shows that reducing drug overdoses requires increased capacity for linking people to treatment and harm reduction services and improving retention across care settings. Linking individuals with a substance use disorder to treatment and harm reduction is a key strategy for saving lives and it is crucial that jurisdictions implement surveillance strategies that can inform and improve their linkage to and retention in care activities.

In September 2023, CDC launched a new surveillance program as part of the Overdose Data to Action: Limiting Overdose through Collaborative Actions in Localities (OD2A: LOCAL) Notice of Funding Opportunity (NOFO): Linkage to and Retention in Care Surveillance. Linkage to Care is a five-year NOFO which connects individuals at risk of overdose to evidence-based treatment, services, and supports, thereby reducing future overdoses and other harms associated with substance use. Implementation of surveillance systems to collect data on standardized Linkage to and Retention in Care indicators is needed so that health departments can measure the impact of their linkage to care programs, inform overdose prevention activities, and appropriately allocate public health resources where they are most needed.

Funded local health departments will be tasked with the collection and sharing of standardized Linkage to and Retention in Care indicators with CDC, as part of this effort. Local health departments are uniquely suited to implement surveillance systems for standardized Linkage to and Retention in Care (LTC) indicators due to their proximity to the communities they serve and access to data from local linkage to care programs and activities. Following an extensive environmental scan and

with input from local and state overdose prevention and response programs, the CDC defined a substance use disorder cascade of care (CoC) and a set of minimum standard measures to assess local LTC efforts. The overarching goal of this initiative hinges on generating actionable data that jurisdictions can leverage to enhance and fine-tune their linkage to and retention in care

programs. Linkage to and Retention in Care surveillance will also foster a robust foundation for deriving insights into disparities, unmet needs, and optimal practices across the CoC.
This approach will help standardize data processes to drive data-to-action decision making and improve intra-jurisdictional comparisons over time to drive better health outcomes.

Ultimately, a standardized approach ensures that a greater number of individuals access the care they require and drives meaningful change in how individuals are connected to care. CDC requests OMB approval for an estimated 240 annual burden hours for this collection. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Participating health departments reporting aggregate data to CDC using REDCap.	REDCap Data Import Template.	12	2	8
	REDCap Data Entry Form ...	12	2	2

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.
[FR Doc. 2024–13903 Filed 6–24–24; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Board of Scientific Counselors, National Center for Injury Prevention and Control

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).
ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC). The BSC, NCIPC consists of up to 18 experts in pertinent disciplines involved in injury, overdose, and violence prevention.
DATES: Nominations for membership on the BSC, NCIPC must be received no later than August 1, 2024. Packages received after this time will not be considered for the current membership cycle.
ADDRESSES: All nominations should be emailed to ncipcbosc@cdc.gov.
FOR FURTHER INFORMATION CONTACT: Christopher R. Harper, Ph.D.,

Designated Federal Officer, Board of Scientific Counselors, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S–1069, Atlanta, Georgia 30341. Telephone: (404) 718–8330; Email: ncipcbosc@cdc.gov.
SUPPLEMENTARY INFORMATION: Nominations are sought for individuals who have expertise and qualifications necessary to contribute to the accomplishment of the objectives of the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC). Nominees will be selected based on expertise in the fields of pertinent disciplines involved in injury, overdose, and violence prevention, including, but not limited to, epidemiology, statistics, rehabilitation medicine, behavioral science, health economics, program evaluation, political science, law, criminology, and other aspects of injury management. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms. Selection of members is based on candidates’ qualifications to contribute to the accomplishment of BSC, NCIPC objectives (<https://www.cdc.gov/injury/scientific-counselors/index.html>).
Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented and the committee’s function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current

participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Board members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. CDC reviews potential candidates for BSC, NCIPC membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in September 2025, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.
Candidates should submit the following items:
■ Cover letter stating area of expertise
■ Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address)
■ At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (e.g., CDC, National Institutes of Health, Food and Drug Administration, Substance Abuse and Mental Health Services Administration).
Nominations may be submitted by the candidate or by the person/organization recommending the candidate.
The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease

Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–13868 Filed 6–24–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10280]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 26, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10280 Home Health Change of Care Notice

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Titles of*

Information Collection: Home Health Change of Care Notice; *Use:* The purpose of the Home Health Change of Care Notice (HHCCN) is to notify original Medicare beneficiaries receiving home health care benefits of plan of care changes. Consistent with the Medicare Conditions of Participation (COPs) for home health agencies (HHAs) and the decision of the US Court of Appeals 2nd Circuit decision in *Lutwin v. Thompson*, HHAs must provide the HHCCN to a beneficiary whenever they reduce or terminate that beneficiary's home health services due to physician/provider orders or limitation of the HHA in providing the specific service. Notification is required for covered and non-covered services listed in the plan of care (POC). Implementing regulations are found at 42 CFR 484.10(c). These requirements are fulfilled by the HHCCN.

Home health agencies (HHAs) are required to provide written notice to Original Medicare beneficiaries under various circumstances involving the reduction or termination of items and/or services consistent with Home Health Agencies Conditions of Participation (COPs). The beneficiary will use the information provided to decide whether or not to pursue alternative options to continue receiving the care noted on the HHCCN. *Form Numbers:* CMS–10280 (OMB control number: 0938–1196); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 11,353; *Total Annual Responses:* 19,004,850; *Total Annual Hours:* 1,265,723. (For policy questions regarding this collection contact, Jennifer McCormick at 410–786–2852.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–13892 Filed 6–24–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–1694 and CMS–R–246]

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 July 25, 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:* Appointment of Representative and Supporting Regulations in 42 CFR 405.910; *Use:* The requirements for appointing representatives for claims and appeals processed under 42 CFR part 405 subpart I were codified into regulation at 42 CFR 405.910. In summary, section 405.910 states an individual or entity may appoint a representative to act on their behalf in exercising their rights relative to an initial claim determination or an appeal. The appointment of representation must be in writing and must include all the required elements specified in 405.910(c). The burden associated with this requirement is the time and effort of the individual or entity to prepare an appointment of representation containing all the required information of this section. To reduce some of the burden associated with this requirement, we developed a standardized form that the individual/entity may opt (but is not required) to use.

This form would be completed by Medicare beneficiaries, providers and suppliers (typically their billing clerk, or billing company), and any party who wish to appoint a representative to assist them with their initial Medicare claims determinations and filing appeals on Medicare claims. The information supplied on the form is reviewed by Medicare claims and appeals adjudicators. The adjudicators make determinations whether the form was completed accurately, and if the form is correct and accepted, the form is appended to the claim or appeal that it was filed with. *Form Number:* CMS-1696 (OMB control number: 0938-0950); *Frequency:* Occasionally; *Affected Public:* Individuals and Households and Private Sector; *Number of Respondents:* 213,208; *Total Annual Responses:* 213,208; *Total Annual Hours:* 53,302. (For policy questions regarding this collection contact Liz Hosna at 410-786-4993.

2. *Type of Information Collection Request:* Revision of a currently

approved collection; *Title of Information Collection:* Medicare Advantage, Medicare Part D, and Medicare Fee-For-Service Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey; *Use:* CMS is required to collect and report information on the quality of health care services and prescription drug coverage available to persons enrolled in a Medicare health or prescription drug plan under provisions in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Specifically, the MMA under Sec. 1860D-4 (Information to Facilitate Enrollment) requires CMS to conduct consumer satisfaction surveys regarding Medicare prescription drug plans and Medicare Advantage plans and report this information to Medicare beneficiaries prior to the Medicare annual enrollment period. The Medicare CAHPS survey meets the requirement of collecting and publicly reporting consumer satisfaction information. The Balanced Budget Act of 1997 also requires the collection of information about fee-for-service plans. The CAHPS survey measures are incorporated into the Part C and D Star Ratings that are published on www.medicare.gov each fall to help consumers choose a Medicare plan. A subset of the CAHPS measures is also included in the *Medicare & You Handbook*. CAHPS information from MA contracts also feeds into the calculation of MA Quality Bonus Payment Ratings that are required by statute and regulation.

The primary purpose of the Medicare CAHPS surveys is to provide information to Medicare beneficiaries to help them make more informed choices among health and prescription drug plans available to them. Survey results are reported by CMS in the *Medicare & You Handbook* published each fall and on the Medicare Plan Finder website. Beneficiaries can compare CAHPS scores for each health and drug plan as well as compare MA and FFS scores when making enrollment decisions. The Medicare CAHPS also provides data to help CMS and others monitor the quality and performance of Medicare health and prescription drug plans and identify areas to improve the quality of care and services provided to enrollees of these plans. CAHPS data are included in the Medicare Part C & D Star Ratings and used to calculate MA Quality Bonus Payments. *Form Number:* CMS-R-246 (OMB control number: 0938-0732); *Frequency:* Yearly; *Affected Public:* Individuals and Households *Number of Respondents:* 794,500; *Total Annual Responses:* 794,500; *Total Annual*

Hours: 192.265. (For policy questions regarding this collection contact Lauren Fuentes at 410-786-2290 or lauren.fuentes@cms.hhs.gov).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-13891 Filed 6-24-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-N-2177]

Laboratory Developed Tests: Small Entity Compliance Guide; Guidance for Laboratory Manufacturers and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled “Laboratory Developed Tests: Small Entity Compliance Guide.” The laboratory developed tests (LDT) final rule amended FDA’s regulations to make explicit that in vitro diagnostic products (IVDs) are devices under the Federal Food, Drug, and Cosmetic Act (FD&C Act) including when the manufacturer of the IVD is a laboratory. This small entity compliance guide (SECG) is intended to help small entities comply with applicable medical device regulations, consistent with the LDT final rule, including the phasing out of FDA’s general enforcement discretion approach for LDTs so that IVDs manufactured by a laboratory will generally fall under the same enforcement approach as other IVDs.

DATES: The announcement of the guidance is published in the **Federal Register** on June 25, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to

the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2023-N-2177 for “Laboratory Developed Tests: Small Entity Compliance Guide.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled “Laboratory Developed Tests: Small Entity Compliance Guide” to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Brittany Schuck, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5422, Silver Spring, MD 20993-0002, 301-796-5199, LDTFinalRule@fda.hhs.gov; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 6, 2024 (89 FR 37286), FDA issued a final rule to amend its regulations to make explicit that IVDs are devices under the FD&C Act including when the

manufacturer of the IVD is a laboratory. The final rule, which is codified at 21 CFR 809.3, is effective July 5, 2024. In conjunction with this amendment, the FDA is phasing out its general enforcement discretion approach for LDTs so that IVDs manufactured by a laboratory will generally fall under the same enforcement approach as other IVDs. This phaseout policy includes enforcement discretion policies for specific categories of IVDs manufactured by a laboratory, including currently marketed IVDs offered as LDTs and LDTs for unmet needs. This phaseout policy is intended to better protect the public health by helping to assure the safety and effectiveness of IVDs offered as LDTs, while also accounting for other important public health considerations such as patient access and reliance. FDA has prepared this SECG to assist small entities in complying with the requirements established in FDA regulations, as they apply to IVDs, including LDTs.

This level 2 guidance is being issued consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>. This guidance document is also available at <https://www.regulations.gov>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics>. Persons unable to download an electronic copy of “Laboratory Developed Tests: Small Entity Compliance Guide; Guidance for Laboratory Manufacturers and Food and Drug Administration Staff” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number GUI00007036 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The following collections of information have been approved by OMB: OMB control number 0910–0437, Medical Device Reporting; OMB control number 0910–0359, Corrections and Removals; OMB control number 0910–0625, Device Registration and Listing; OMB control number 0910–0485, Device Labeling; OMB control number 0910–0078, Investigational Device Exemption; OMB control number 0910–0073, Quality Systems, including § 820.198 (complaint files); OMB control number 0910–0231, Premarket Approval; OMB control number 0910–0332, Humanitarian Device Exemption; OMB control number 0910–0120, Premarket Notification; OMB control number 0910–0844 De Novo Requests; OMB control number 0910–0338, Biologics License Applications Procedures & Requirements; OMB control number 0910–0052, Blood Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products and Licensed Devices; OMB control number 0910–0014, Investigational use requirements under 42 U.S.C. 262 and 21 CFR part 312 for certain devices that are biological products; and OMB control number 0910–0756, FDA’s final guidance document entitled “Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program.”

Dated: June 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–13872 Filed 6–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Ryan White HIV/AIDS Program Core Medical Services Waiver Form

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 July 25, 2024. The form will become effective on October 1, 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: Ryan White HIV/AIDS Program Core Medical Services Waiver Form, OMB No. 0906–0065—Revision

Abstract: In accordance with sections 2604(c), 2612(b), and 2651(c) of the Public Health Service Act, recipients are required to spend not less than 75 percent of funds on core medical services for individuals identified with HIV and who are eligible under the statute, after reserving permissible amounts for administrative and clinical quality management (CQM) costs. The statute also grants the Secretary authority to waive this requirement for a Ryan White HIV/AIDS Program (RWHAP) Part A, B, or C recipient if certain requirements are met, and a waiver request is submitted to HRSA for approval.

As currently implemented by HRSA, in order to be approved, (1) core medical services must be available and accessible to all individuals identified and eligible for the RWHAP in the recipient’s service area within 30 days. This access must be without regard to payer source, and without the need to spend at least 75 percent of funds

remaining from the recipient's RWHAP award after statutorily permissible amounts for administrative and CQM costs are reserved; (2) the recipient must ensure there are no AIDS Drug Assistance Program (ADAP) waiting lists in its service area; and (3) a public process to obtain input on the waiver request must have occurred. This process must seek input from impacted communities, including clients and RWHAP-funded core medical services providers, on the availability of core medical services, and the decision to request the waiver. The public process may be a part of the same one used by recipients to seek input on community needs as part of the annual priority setting and resource allocation, comprehensive planning, statewide coordinated statement of need, public planning, and/or needs assessment processes. RWHAP Parts A, B, and C core medical services waiver requests must include funds awarded under the Minority AIDS Initiative. Core medical services waivers are effective for a 1-year period.

The process for RWHAP Parts A, B, and C grant recipients to request a waiver of the minimum expenditure amount requirements for core medical services is outlined in Policy Notice 21–01, Waiver of the Ryan White HIV/AIDS Program Core Medical Services Expenditure Requirement. Policy Notice 21–01 is currently being revised and will be effective October 1, 2024.

HRSA proposes to modify the one-page form to include the proposed percentages of HIV service dollars allocated to core medical and support services. Under the proposed changes, a field will be added to the form to capture the proposed percentages. This information will inform HRSA whether

recipients are able to meet the statutory requirements in sections 2604(c), 2612(b), and 2651(c) of the Public Health Service Act and will clarify what proposed portion of funds will be allocated to core medical and support services. Minor changes will also be made to the form to increase readability.

Summary of Proposed Changes: Sections 2604(c), 2612(b), and 2651(c) of the Public Health Service Act require recipients to spend not less than 75 percent of funds on core medical services after reserving statutorily permissible amounts for administrative and CQM costs. However, on the current version of the form, the portion of HIV service dollars to be allocated to core medical and support services was sometimes unclear. The suggested change to the form adds a requirement to include the proposed percentages of HIV service dollars allocated to core medical and support services. The table on the current form is expanded to allow for the insertion of the proposed percentages for core medical and support services. Instructions at the top of the new form are updated to indicate where to insert the proposed percentages. Language within the table is also updated to increase readability.

The proposed changes do not modify the underlying requirements necessary to obtain a waiver: all core medical services are available and accessible within 30 days in the jurisdiction or service area; ensuring that the state ADAP has no waiting lists; and that the recipient has used a public process to determine the need for a waiver. Recipients may still need to provide supportive evidence to HRSA upon request.

A 60-day notice published in the **Federal Register** on February 27, 2024,

vol. 89, No. 39; pp. 14507–14508. There were no public comments.

Need and Proposed Use of the Information: HRSA uses the documentation submitted in core medical services waiver requests to determine if the RWHAP Parts A, B, and C grant applicant or recipient meets the statutory requirements for waiver eligibility including: (1) no waiting lists for ADAP services; and (2) evidence of core medical services availability within the grant recipient's jurisdiction, state, or service area to all persons identified with HIV and eligible under Title XXVI of the Public Health Service Act.

Likely Respondents: HRSA expects responses from RWHAP Parts A, B, and C grant applicants and recipients. The number of grant recipients requesting waivers fluctuates annually and has ranged up to 23 per year since its implementation in fiscal year 2007. In light of recent trends, HRSA anticipates receiving possibly up to 23 applications in a given year.

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
RWHAP Core medical Services Waiver request Attestation Form	23	1	23	0.49	11.27
Total	23	.....	23	.....	11.27

HRSA specifically requests comments on (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.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–13857 Filed 6–24–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following 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 material, 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: July 18, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21A, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601

Fishers Lane, Room 3G21A, Rockville, MD 20852, 240.627.3219, shiv.prasad@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 18, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–13838 Filed 6–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIH)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

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: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia Currie, Project Clearance Officer, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892 or call non-toll-free number (301) 435–

0941 or email your request, including your address to: curriem@mail.nih.gov.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on April 10th, 2024 (89 FR 25275) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institutes of Health (NIH) may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number.

In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, NIH has submitted to OMB a request for review and approval of the information collection listed below.

Proposed Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, EXTENSION, 0925–0648, expiration date 06/30/2024, National Institutes of Health (NIH).

Need and Use of Information Collection: There are no substantive changes being requested for this submission. The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This generic clearance will continue to provide information about the NIH Institutes and Centers customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 103,083.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Annual frequency per response	Average time per response (in hours)	Total annual burden hours
Customer Satisfaction Surveys	1,000	1	30/60	500
In-Depth Interviews (IDIs) or Small Discussion Groups	1,000	1	90/60	1,500
Focus Groups	1,000	1	90/60	1,500
Usability and Pilot Testing	150,000	1	5/60	12,500
Conference/Training—Pre-and Post-Surveys	100,000	2	10/60	33,333
NIH-Wide Basic Abstract Form	50,000	1	1	50,000
NIH-Wide Basic Registration Form	75,000	1	3/60	3,750
Total	378,000	478,000	.....	103,083

Dated: June 17, 2024.

Lawrence A. Tabak,
Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–13914 Filed 6–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel; Review of AREA grants in Cell Biology, Molecular Biology and Genetics, July 08, 2024, 09:00 a.m. to July 09, 2024, 07:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on June 07, 2024, 89 FR 48659, Doc 2024–12475.

This meeting is being amended to change the meeting from a two-day meeting to a one-day meeting on July 8, 2024, from 9:00 a.m. to 7:00 p.m. The meeting is closed to the public.

Dated: June 18, 2024.

Lauren A. Fleck,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–13840 Filed 6–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings 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 material, 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: Center for Scientific Review Special Emphasis Panel; Small Business: Social and Community Influences Across the Lifecourse.

Date: July 15–16, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: David E Pollio, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1006F, Bethesda, MD 20892, (301) 594–4002, polliode@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Microbial Diagnostics, Detection and Decontamination.

Date: July 17–18, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5997, shinako.takada@nih.gov.

Name of Committee: Social and Community Influences on Health Integrated Review Group; Population and Public Health Approaches to HIV/AIDS Study Section.

Date: July 17–18, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aubrey S Madkour, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000C, Bethesda, MD 20892, (301) 594–6891, madkouras@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA: Understanding Neurological Effects of COVID–19 and Post-Acute Sequelae of SARS–CoV–2 Infection.

Date: July 17–18, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aleksey Gregory Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, (301) 435–1042, aleksey.kazantsev@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Diagnostics and Treatments (CDT).

Date: July 17–18, 2024.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victor A Panchenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 802B2, Bethesda, MD 20892, (301) 867–5309, victor.panchenko@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Clinical Care and Health Interventions.

Date: July 17, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164,

MSC 7770, Bethesda, MD 20892, (301) 806–0009, jacinta.bronte-tinkew@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Surgery, Anesthesiology, and Trauma.

Date: July 17, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, wrightds@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Applied Immunology and Vaccine Development.

Date: July 17–18, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dayadevi Jirage, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4422, Bethesda, MD 20892, (301) 867–5309, jiragedb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biology and Development of the Eye.

Date: July 17, 2024.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301.402.3717, jessica.smith6@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuroendocrinology, Sleep, Alcohol and Neurobiology of Motivated Behavior.

Date: July 17, 2024.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Myongsoo Matthew Oh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011F, Bethesda, MD 20892, (301) 435–1042, ohmm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuroimmunology, Glioma, Brain Injury, and Anxiety Disorders.

Date: July 17, 2024.

Time: 12:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vilen A. Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, movsesyanv@csr.nih.gov.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; HIV Immunopathogenesis and Vaccine Development Study Section.

Date: July 18–19, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; Rockledge II; 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Philip Owens, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 594–7394, owensp2@csr.nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Aging, Injury, Musculoskeletal, and Rheumatologic Disorders Study Section.

Date: July 18–19, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nketi I Forbang, MD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1006K1, Bethesda, MD 20892, (301) 594–0357, forbangni@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 18, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–13839 Filed 6–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0184]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0007

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0007, Characteristics of Liquid Chemicals Proposed for Bulk Water Movement; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before July 25, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov>. Search for docket number [USCG–2024–0184]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>.

Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email hqs-dg-m-cg-61-pii@uscg.mil for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important

information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0184, and must be received by July 25, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the <https://www.reginfo.gov>, comment-submission web page. OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0007.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 18427, March 13, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

OMB Control Number: 1625–0007.

Summary: Chemical manufacturers submit chemical data to the Coast Guard. The Coast Guard evaluates the information for hazardous properties of the chemical to be shipped via tank vessel. A determination is made as to the kind and degree of precaution which must be taken to protect the vessel and its contents.

Need: 46 CFR parts 30 to 40, 151, 153, and 154 govern the transportation of hazardous materials. The chemical industry constantly produces new materials that must be moved by water. Each of these new materials has unique characteristics that require special attention to their mode of shipment.

Forms: None.

Respondents: Manufacturers of chemicals.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden has increased from 600 hours to 2,190 hours a year, due to an increase in the estimate annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.*, chapter 35, as amended.

Dated: May 23, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–13885 Filed 6–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0185]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0025

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the

U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0025, Carriage of Bulk Solids Requiring Special Handling; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before July 25, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov>. Search for docket number [USCG–2024–0185]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>.

Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email hqs-dg-m-cg-61-pii@uscg.mil for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0185, and must be received by July 25, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the <https://www.reginfo.gov>, comment-submission web page. OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0025.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 18426, March 13, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Carriage of Bulk Solids Requiring Special Handling.

OMB Control Number: 1625–0025.

Summary: As specified in 46 CFR part 148, the petition for a Special Permit allows the Coast Guard to determine the manner of safe carriage for unlisted materials. The information required by Dangerous Cargo Manifests and Shipping Papers permit vessel crews and emergency personnel to properly and safely respond to accidents involving hazardous substances. See 46 CFR 148 subpart B and §§ 148.60 and 148.70.

Need: The Coast Guard administers and enforces statutes and rules for the safe transport and stowage of hazardous materials, including bulk solids.

Forms: None.

Respondents: Owners and operators of vessels that carry certain bulk solids.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 910 hours to 760 hours a year; due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.*, chapter 35, as amended.

Dated: May 23, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–13889 Filed 6–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0047]

Collection of Information under Review by Office of Management and Budget; OMB Control Number 1625–0044

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR),

abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0044, Outer Continental Shelf Activities; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before July 25, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov>. Search for docket number [USCG–2024–0047]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>.

Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE., STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email hqs-dg-m-cg-61-pii@uscg.mil for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary

for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0047, and must be received by July 25, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the <https://www.reginfo.gov>, comment-submission web page. OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0044.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day

notice (89 FR 16781, March 8, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Outer Continental Shelf Activities—Title 33 CFR subchapter N.

OMB Control Number: 1625–0044.

Summary: The Outer Continental Shelf Lands Act, as amended, authorizes the Coast Guard to promulgate and enforce regulations promoting the safety of life and property on Outer Continental Shelf (OCS) facilities. These regulations are located in 33 CFR subchapter N.

Need: The information is needed to ensure compliance with the safety regulations related to OCS activities. The regulations contain reporting and recordkeeping requirements for annual inspections of OCS facilities, employee citizenship records, station bills, and emergency evacuation plans.

Forms:

- CG–5432, Fixed OCS Facility Inspection Report.

Respondents: Operators of facilities and vessels engaged in activities on the OCS.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 9,582 hours to 9,578 hours a year, due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.*, chapter 35, as amended.

Dated: May 23, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–13908 Filed 6–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7086–N–17]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing of Delinquent, Default, and Foreclosure With Service Members Act, OMB Control No.: 2502–0584

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection

described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 26, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email: PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; telephone 202–402–3577, (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing of Delinquent Default, and Foreclosure with Service Members Act.

OMB Approval Number: 2502–0584.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD 92070, HUD–2008–5–FHA, HUD 92068–A, HUD–50012, HUD–90041.

Description of the need for the information and proposed use: This request for information collection encompasses requirements for both FHA-approved Mortgagees who service FHA-insured mortgages and FHA-insured Mortgagors (borrowers). Information received must comply with delinquency and default servicing,

foreclosure, and the Servicemembers Civil Relief Act (SCRA) requirements. The need and proposed use of the collection efforts for non-performing FHA-insured mortgages is to bring a delinquent mortgage current as quickly as possible, avoid foreclosure when feasible, and minimize losses to FHA's Mutual Mortgage Insurance Fund.

Estimated Number of Respondents: 3,360.
Frequency of Response: Monthly.
Estimated Number of Responses: 26,668,067.
Average Hours per Response: 1.05.
Total Estimated Burdens: 15,723,493.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
FHA-Insured Mortgage Loan Servicing of Delinquent, Default, and Foreclosure with Service Members Act.	3,360	Monthly	26,668,067	1.05	15,723,493	\$34.16	\$537,114,520
Totals	3,360	.....	26,668,067	.....	15,723,493	34.16	537,114,520

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

- (1) 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;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Vance T. Morris,
Associate General Deputy Assistant Secretary for Housing.
[FR Doc. 2024–13855 Filed 6–24–24; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

[RR04900000, 234R0787ZA,
RX.Z8379000.BR00000]

Notice of Intent To Negotiate a Contract Between Utah Water Conservancy District and Department of the Interior for Payment of a Portion of the Central Utah Project, Bonneville Unit Import Water Stored in Utah Lake

AGENCY: Office of the Assistant Secretary for Water and Science, Interior.
ACTION: Notice of intent.

SUMMARY: The Central Utah Water Conservancy District intends to purchase up to 6,000 acre-feet of import water from the total quantity annually stored in Utah Lake. These return flows originate from the Bonneville Unit of the Central Utah Project.
DATES: A public meeting to negotiate a water service contract will be held at the Central Utah Water Conservancy District in Orem, Utah, at a date and time announced locally.
ADDRESSES: The public meeting will be held at the Central Utah Water Conservancy District Office, 1426 East 750 North, Suite 400, Orem, Utah 84097.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this Federal Register notice can be obtained by contacting Mr. Wesley James, Program Coordinator, Central Utah Project Completion Act Office, Department of the Interior, 302 East Lakeview Parkway, Provo, Utah 84606; via telephone at (801) 379–1137; or by email at wsjames@usbr.gov.
SUPPLEMENTARY INFORMATION: Public Law 102–575, Central Utah Project Completion Act, section 207, provides for minimum inflows and meets statutory and environmental requirements for Central Utah Project

(CUP), Bonneville Unit water into Utah Lake. CUP import water is delivered from Strawberry Reservoir, released into Spanish Fork River, Hobble Creek and Provo River and then stored in Utah Lake under subject water rights.

CUP import water is the result of the Strawberry/Utah Lake/Jordanelle exchange, providing storage of Provo River water in Jordanelle Reservoir which otherwise would naturally flow to Utah Lake. In return for this stored water, CUP water is delivered from Strawberry Reservoir to Utah Lake as CUP import water. CUP import water stored in Utah Lake in excess of the amount required for this exchange may be available for other purposes.

The Department of the Interior desires to make available to the Central Utah Water Conservancy District (District) up to 6,000 acre-feet of CUP import water stored in Utah Lake to be used by the District to offset the non-Federal Central Water Project Utah Lake Water depletions.

Section 9(c)(2) of the 1939 Reclamation Project Act provides for the Secretary of the Department of the Interior to enter into municipal & industrial water service contracts and to set the water charge rate at what is deemed reasonable and appropriate.

In accordance with Public Law 102–575, the District intends to purchase a portion of the return flows associated with the Bonneville Unit that are stored in Utah Lake. The terms of the payment are to be publicly negotiated between the District and the Department of the Interior.

Paul Christensen,
Program Director, Central Utah Project Completion Act Office, Department of the Interior.
[FR Doc. 2024–13764 Filed 6–24–24; 8:45 am]
BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION**[Investigation No. 731–TA–1658 (Final)]****Truck and Bus Tires From Thailand; Revised Schedule for the Subject Investigation****AGENCY:** International Trade Commission.**ACTION:** Notice.**DATES:** June 20, 2024.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: Effective May 20, 2024, the Commission established a schedule for the conduct of the final phase of the subject investigation (89 FR 49903, June 12, 2024). The Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows. The deadline for filing prehearing briefs is 5:15 p.m. on October 2, 2024; if a brief contains business proprietary information, a nonbusiness proprietary version is due the following business day. The prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 7, 2024, if deemed necessary, while the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 9, 2024.

For further information concerning this proceeding, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 18, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–13851 Filed 6–24–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION**[USITC SE–24–027]****Sunshine Act Meetings**

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 28, 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–727 and 731–TA–1695 (Preliminary) (Disposable Aluminum Containers, Pans, Trays, and Lids from China). The Commission currently is scheduled to complete and file its determinations on July 1, 2024; views of the Commission currently are scheduled to be completed and filed on July 9, 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. Earlier notification of this meeting was not possible.

By order of the Commission:

Issued: June 21, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–14059 Filed 6–21–24; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Testing, Evaluation, and Approval of Mining Products**

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before July 25, 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: Michael Howell by telephone at 202–693–6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: MSHA regulations at 30 CFR parts 6 through 36 contain application, testing and inspection procedures, and quality control procedures for the approval of mining equipment or explosives used in both underground and surface coal, metal, and nonmetal mines. Except for parts 6 and 7, MSHA conducts most of the testing and evaluation of products for a fee paid by the applicant; although some regulations require the manufacturer to pretest the product. Upon MSHA approval, the manufacturer must ensure that the product continues to conform to the specifications and design evaluated and approved by MSHA. In some instances, as part of the approval process, manufacturers are required to have a quality control or assurance plan. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 10, 2024 (89 FR 25281).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of

automated collection techniques or other forms of information technology.

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 the OMB approves it 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 OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–MSHA.

Title of Collection: Testing, Evaluation, and Approval of Mining Products, 30 CFR Subchapter B—Parts 6 Through 36.

OMB Control Number: 1219–0066.

Affected Public: Businesses or other for-profits.

Number of Respondents: 83.

Frequency: On occasion.

Number of Responses: 248.

Annual Burden Hours: 2,539 hours.

Total Estimated Annual Other Costs Burden: \$ 2,184,442.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–13817 Filed 6–24–24; 8:45 am]

BILLING CODE 4510–43–P

MERIT SYSTEMS PROTECTION BOARD

Public Availability of the Merit Systems Protection Board FY 2021 Service Contract Inventory

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The Merit Systems Protection Board (MSPB) publishes this notice to advise the public of the availability of its FY 2021 Service Contract Inventory as required by the Consolidated Appropriations Act of 2010. This inventory provides information on service contract actions over \$25,000 awarded in FY 2021. The inventory was developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). The OFPP's guidance is available at: <https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf>. The MSPB posted its inventory on its website at <https://www.mspb.gov/publicaffairs/contracting.htm>.

FOR FURTHER INFORMATION CONTACT: Tset Wong, Contracting Officer, Office of Financial and Administrative Management, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419; telephone (717) 210–1528; email tset.wong@mspb.gov.

Gina K. Grippando,

Clerk of the Board.

[FR Doc. 2024–13849 Filed 6–24–24; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2024–042]

Office of Government Information Services Annual Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of annual open meeting.

SUMMARY: We are announcing OGIS's annual meeting, open to the public in accordance with the Freedom of Information Act (FOIA). The purpose of the meeting is to discuss OGIS's reviews and reports, and allow interested people to appear and present oral or written statements.

DATES: The meeting will be on July 24, 2024, from 10:00 a.m. to 11:30 a.m. EDT. You must register by 11:59 p.m. EDT July 22, 2024, to attend the meeting.

ADDRESSES: This meeting will be a virtual meeting. We will send instructions on how to access it to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Martha Murphy by email at ogisopenmeeting@nara.gov or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION: This meeting is open to the public in accordance with FOIA provisions at 5 U.S.C. 552(h)(6). OGIS's 2024 Report for Fiscal Year 2023, posted at <https://www.archives.gov/ogis/about-ogis/annual-reports/ogis-2024-annual-report-for-fy-2023>, summarizes OGIS's work in accordance with FOIA provisions at 5 U.S.C. 552(h)(4)(A). You may submit written statements by using OGIS's Public Comments Form, available at <https://www.archives.gov/ogis/public-comments>. If you are interested in presenting oral statements at the meeting you must register in advance via the Eventbrite link below. Each individual will be limited to three minutes each. We will not address

individual OGIS cases or specific FOIA requests.

Procedures: This virtual meeting is open to the public. You must register in advance beginning at 10 a.m. EDT Monday, June 24, 2024, through Eventbrite at: <https://www.eventbrite.com/e/2024-annual-open-meeting-of-the-federal-foia-ombudsman-tickets-921832815767> if you wish to attend, and you must include an email address so that we can send you access information. To request accommodations (e.g., a transcript), email ogis@nara.gov or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Martha Murphy (contact information listed above).

Alina M. Semo,

Office of Government Information Services Director.

[FR Doc. 2024–13854 Filed 6–24–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–24–0014; NARA–2024–040]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on [regulations.gov](https://www.regulations.gov) for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by August 12, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-24-0014/document>. This is a direct link to the schedules posted in the docket for this notice on [regulations.gov](https://www.regulations.gov). You may submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. On the website, enter either of the numbers

cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via *regulations.gov*, you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Strategy and Performance Division, by email at regulation_comments@nara.gov or at 301-837-2902. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as "other" documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly

posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a "Consolidated Reply" summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Commerce, Bureau of Economic Analysis, Office of the Director and Deputy Director Records (DAA-0375-2022-0001).
2. Department of Commerce, National Institute of Standards and Technology, Human Subjects Protection Office Records (DAA-0167-2024-0002).
3. Department of Commerce, U.S. Patent and Trademark Office, Demographic Surveys, Studies, and Reports (DAA-0241-2024-0001).
4. Department of Homeland Security, U.S. Secret Service, Non Intrusive Inspection (NII) Systems (DAA-0087-2024-0001).
5. Department of Health and Human Services, Administration for Strategic Preparedness and Response, Correspondence Management System (DAA-0611-2023-0001).
6. Department of Health and Human Services, Administration for Strategic Preparedness and Response, Disaster Medical Information Suite (DMIS) (DAA-0611-2024-0002).
7. Department of Health and Human Services, Administration for Strategic Preparedness and Response, Public Health Policy Records (DAA-0611-2023-0017).
8. Department of Health and Human Services, Administration for Strategic Preparedness and Response, Responder Safety and Credentialing Records (DAA-0611-2023-0007).
9. Department of Health and Human Services, Administration for Strategic Preparedness and Response, September 11th Victim Compensation Fund Records (DAA-0611-2023-0005).
10. Department of Justice, Executive Office for Immigration Review, Record of Proceeding Case Files (DAA-0582-2024-0002).
11. Department of the Navy, Agency-wide, General Administration and Management (DAA-NU-2024-0002).
12. Department of Transportation, Federal Aviation Administration, Document Imaging Workflow System (DIWS) (DAA-0237-2024-0003).
13. Department of Transportation, Federal Aviation Administration,

Technical Training Records (DAA–0237–2024–0007).

14. Department of Transportation, Federal Aviation Administration, Tower Data Link Services Enterprise (TDLS) (DAA–0237–2024–0002).

15. Federal Labor Relations Authority, Agency-wide, Comprehensive Schedule (DAA–0480–2022–0001).

16. United States International Trade Commission, Office of Unfair Import Investigations Records (DAA–0081–2024–0001).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2024–13861 Filed 6–24–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans for a new data collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received within August 26, 2024 to be assured consideration. Comments received after that date will be considered to the extent practicable. Please send comments to the address below.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of these information collection instruments and instructions should be directed to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E6300, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: U.S. National Science Foundation (NSF) Regional

Innovation Engines (Engines) Program Baseline and Performance Monitoring.

OMB Number: 3145–XXXX.

Expiration Date of Approval: Not applicable.

Type of Request: New information collection

Description:

The instruments will collect data on (1) individuals in leadership or governance roles in an NSF Engine, and individuals engaged or participating in an NSF Engine activities; and (2) organizations that are partnering with an NSF Engine or participating in an NSF Engine’s activities.

Background:

The CHIPS and Science Act of 2022 codified the National Science Foundation’s cross-cutting Directorate for Technology, Innovation and Partnerships (TIP), NSF’s first new directorate in more than 30 years, and charged it with the critical mission of advancing U.S. competitiveness through investments that accelerate the development of key technologies and address pressing national, geostrategic, societal and economic challenges. NSF’s TIP directorate deepens the agency’s commitment to support use-inspired research and the translation of research results to the market and society. In doing so, TIP strengthens the intense interplay between foundational and use-inspired work, enhancing the full cycle of discovery and innovation.

TIP integrates with NSF’s existing directorates and fosters partnerships — with government, industry, nonprofits, civil society, and communities of practice — to leverage, energize and rapidly bring to society use-inspired research and innovation. TIP spurs science and innovations to meet the nation’s priorities by accelerating the development of breakthrough technologies and advancing solutions.

The NSF Regional Innovation Engines (NSF Engines) program serves as a flagship funding program of the TIP directorate, with the goal of expanding and accelerating scientific and technological innovation within the U.S. by catalyzing regional innovation ecosystems throughout every region of our nation. The NSF Engines program was authorized in the CHIPS and Science Act of 2022 (Section 10388) to:

- (1) advance multidisciplinary, collaborative, use-inspired and translational research, technology development, in key technology focus areas;
- (2) address regional, national, societal, or geostrategic challenges;
- (3) leverage the expertise of multi-disciplinary and multi-sector partners, including partners from private

industry, nonprofit organizations, and civil society organizations; and

(4) support the development of scientific, innovation, entrepreneurial, and STEM educational capacity within the region of the Regional Innovation Engine to grow and sustain regional innovation.

The NSF Engines program aims to fund regional coalitions of partnering organizations to establish NSF Engines that will catalyze technology and science-based regional innovation ecosystems. Each NSF Engine is focused on addressing specific aspects of a major national, geostrategic, societal and/or economic challenge that are of significant interest in the NSF Engine’s defined “region of service.” The NSF Engines program envisions a future in which all sectors of the American population can participate in and benefit from advancements in scientific research and development equitably to advance U.S. global competitiveness and leadership. The program’s mission is to establish sustainable regional innovation ecosystems that address pressing national, geostrategic, societal, and/or economic challenges by advancing use-inspired and translational research and development in key technology focus areas. The programmatic level goals of NSF Engines are to:

- Goal 1: Establish self-sustaining innovation ecosystems;
- Goal 2: Establish nationally-recognized regional ecosystems for key industries;
- Goal 3: Broaden participation in inclusive innovation ecosystems;
- Goal 4: Advance technologies relevant to national competitiveness;
- Goal 5: Catalyze regions with nascent innovation ecosystems;
- Goal 6: Increase economic growth; and
- Goal 7: Increase job creation.

The key drivers of change on how the NSF Engines program intends to achieve these goals are the following:

- Use-inspired R&D;
- Cross-sector partnerships;
- Strategic regional investment;
- Inclusive engagement;
- Workforce development;
- Translation to practice; and
- Governance and management.

Each NSF Engine will carry out an integrated and comprehensive set of activities. In addition, each NSF Engine is expected to embody a culture of innovation and have a demonstrated, intense, and meaningful focus on enabling all individuals throughout its region of service, regardless of background, location, or organizational affiliation, to participate in the region’s

nascent and growing science and technology ecosystem. NSF intends to use this information collection to pilot a longitudinal research study to understand how the identified drivers will lead to intended programmatic outcomes.

NSF Engines are awarded as cooperative agreements and are expected to undergo an annual comprehensive evaluation assessment of the NSF Engine's performance, which will inform subsequent-year funding. The total funding for each NSF Engine is up to \$160 million over 10 years. The first-ever group of NSF Engines was announced in January 2024.

Information collected by the Division of Innovation and Technology Ecosystems (ITE) within TIP will allow NSF to assess the program in terms of intellectual, societal, and commercial impacts that are core to the program's goals. Finally, in compliance with the Evidence Act of 2019, information collected will be used for both internal and external program evaluation and assessment, satisfying congressional requests, and supporting the agency's policymaking and reporting needs.

Methodology:

This information collection, which entails collecting information from NSF Engines grantees and participants through a series of surveys, is in accordance with the Agency's commitment to improving service delivery as well as the Agency's strategic goal to "advance the capability of the Nation to meet current and future challenges."

For this pilot, the NSF Engines program intends to collect information using validated survey instruments from literature to better understand

partnership dynamics, and collaboration and trust among individuals within an NSF Engine's leadership team, governance board, programmatic leads, and advisory committees. For ease of use for our respondent pool, survey questionnaires will be programmed into interactive web surveys and distributed to eligible respondents by email. All data collected through web surveys will be made available to the external evaluator(s) for each NSF Engine to be used for their own analyses, assessments, and evaluation. The two categories of data that will be collected for each NSF Engine through web-based surveys are:

- Individual level data
 - Individuals who are a part of the leadership team, governance board, advisory committee(s), or are programmatic leads in an NSF Engine will be asked survey instrument questions that assess their interactions with others in the NSF Engine team; their work in supporting the NSF Engine; and the working environment in the NSF Engine. Individuals will be asked to review and update their survey responses once a year.
- Partner organization level data
 - Partner organizations that are involved in any NSF Engine activities or provide any monetary or in-kind contributions will be asked about their motivations for partnering with the NSF Engine; the factors that came into play when selecting other partner organizations for the activity; sense of reciprocity among partner organizations; partner commitments; trust among partner organizations; and partnership performance. Partner organizations will

be asked to review and update their survey responses once a year.

NSF/TIP will only submit a collection for approval under this clearance if it meets the following conditions:

- The collection has a reasonably low burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for the Federal government;
- The collection is non-controversial and does not raise issues of concern for other Federal agencies;
- Information gathered will be used for the dual and interrelated purposes of disseminating information about the NSF Engines program and using this information to make programmatic improvements, identify efficiencies, and conduct enhanced program monitoring for NSF Engines.

Information collected under this clearance will enable the NSF Engines program to validate these survey instruments for the NSF Engines population; adjust the survey instruments as necessary for a full longitudinal research study; and enable better understanding of the interplay among factors that contribute to the development of innovation ecosystems. In addition, this information collection will help TIP monitor the changes that accompany the maturation of innovation ecosystems over time.

Affected Public: Please refer to the detailed descriptions of each data category for the targeted groups.

Average Expected Annual Number of Respondents: For each NSF Engine award, we anticipate the following lower and upper bounds for number of responses and response burden:

Respondent	Estimated lower bound (number of responses)	Estimated upper bound (number of responses)	Estimated average response time (min)	Frequency of data collection	Approximate annual response burden (hours) [lower-bound]	Approximate annual response burden—(hours) [upper-bound]
Individuals or survey coordinator from partner organizations.	30	200	15	Once a year	7.5	50

Respondents: Lower-bound estimate of 30 individuals or survey coordinator (from partner organizations) and upper bound estimate of 200 individuals or survey coordinators per NSF Engine award.

Annual Responses: Lower- and upper-bound estimates of 30 and 200 responses per NSF Engine award per year, respectively. Total number of annual responses will be based on the total number of Engine participants and partner organizations.

Frequency of Response: Once a year.

Average Minutes per Response: 15.

Burden Hours: Lower- and upper-bound estimates of approximately 7.5 and 50 hours per NSF Engine award, respectively.

Comments: 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 shall have practical utility; (b) the accuracy of the Agency's

estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

Dated: June 20, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024-13918 Filed 6-24-24; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-352 and 50-353; NRC-2024-0113]

Constellation Energy Generation, LLC; Limerick Generating Station, Units 1 and 2; License Amendment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. NPF-39 and NPF-85, issued to Constellation Energy Generation, LLC for operation of the Limerick Generating Station, Units 1 and 2. The proposed amendments would revise the technical specifications for detecting and responding to leakage in the turbine enclosure main steam line tunnel.

DATES: Submit comments by July 25, 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. Requests for a hearing or petition for leave to intervene must be filed by August 26, 2024.

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-2024-0113. 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 individual 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:

Audrey Klett, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-0489; email: Audrey.Klett@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2024-0113 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-2024-0113.

- *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 license amendment request is available in ADAMS under Accession No. ML24165A264.

- *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-2024-0113 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. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. NPF-39 and NPF-85 (Docket Nos. 50-352 and 50-353, respectively) issued to Constellation Energy Generation, LLC for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania.

The proposed amendments would revise the technical specifications for detecting and responding to leakage in the turbine enclosure main steam line tunnel. The proposed amendments would delete turbine enclosure main steam line tunnel temperature requirements from various instrumentation-related technical specifications and add a new specification to verify there is no leakage from the main steam line pressure boundary when the turbine enclosure main steam line tunnel temperature exceeds a certain value.

Before issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), “Issuance of amendment,” this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented as follows:

1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not alter any of the previously evaluated accidents in the UFSAR [updated final safety analysis report]. The proposed changes do not affect any of the initiators of previously evaluated accidents in a manner that would increase the likelihood of the event. The proposed change also eliminates the automatic MSIV [main steam isolation valve] isolation function associated with TE [turbine enclosure] MSL [main steam line] Tunnel high temperature from the requirements of the Technical Specifications (TS) and creates TS requirements for TE MSL tunnel temperature monitoring in a new TS 3/4.7.9.

Automatic isolation of the MSIVs on TE MSL tunnel high temperature is not an initiator of any accident previously evaluated. A manual plant shutdown initiated due to MSL leakage in the TE MSL tunnel is not an initiator of any accident previously evaluated. There is no credit taken in any licensing basis analysis for MSIV closure on TE MSL tunnel high temperature, and there are no calculations that credit the subject isolation function as a mitigative feature.

As a result, the likelihood of malfunction of an SSC [structure, system, and component] is not increased. The capability and operation of the mitigation systems are not affected by the proposed changes. Thus, the mitigating systems will continue to be initiated and mitigate the consequences of an accident as assumed in the analysis of accidents previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes will not introduce any new operating modes, safety-related equipment lineups, accident scenarios, system interactions, or failure modes that would create a new or different type of accident. Failure(s) of the system will have the same effect as the present design.

The proposed change also eliminates the automatic MSIV isolation function associated with TE MSL Tunnel high temperature from the requirements of the TS and creates TS requirements for

TE MSL tunnel temperature monitoring in a new TS 3/4.7.9. Eliminating the automatic isolation of the MSIVs will not create a new or different kind of accident from those previously evaluated as a Main Steam Line Break has been evaluated. Elimination of the automatic isolation function will not create a new failure mechanism as a plant shutdown continues to be required if an MSL leak is detected.

The proposed change from an automatic shutdown to a manual shutdown will not create any credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases. The unlikely failure to manually detect an MSL leak and shutdown the plant and that failure leading to a Main Steam Line Break has already been evaluated and is not a new type of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed amendments involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the accident source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated and are consistent with safety analysis assumptions and resultant consequences. The proposed changes do not impact reactor operating parameters or the functional requirements of the affected instrumentation systems. These systems will continue to provide the design basis reactor trips and protective system actuations. All design basis events, and the reliance on the reactor trips and protective system actuations will remain unchanged. No controlling numerical values for parameters established in the UFSAR or the license or Safety Limits are affected by the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice

will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that

the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

IV. Electronic Submissions and E-Filing

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by

telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting

documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated June 13, 2024 (ADAMS Accession No. ML24165A264).

Attorney for licensee: Jason Zorn, Associate General Counsel, Constellation Energy Generation, LLC, 101 Constitution Ave. NW, Suite 400 East, Washington, DC 20001.

NRC Branch Chief: Hipolito Gonzalez.

Dated: June 20, 2024.

For the Nuclear Regulatory Commission.

Audrey L. Klett,

Senior Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024-13911 Filed 6-24-24; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–409, 72–046, and 72–017; NRC–2024–0111]

Issuance of Multiple Exemptions Regarding Security Notifications, Reports, and Recordingkeeping

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a single notice to announce the issuance of two exemptions in response to requests from two licensees. These exemptions were requested as a result of a change to NRC's regulations published in the **Federal Register** on March 14, 2023.

DATES: During the period from May 1, 2024, to May 31, 2024, the NRC granted two exemptions in response to requests submitted by two licensees from November 15, 2023, to December 14, 2023.

ADDRESSES: Please refer to Docket ID NRC–2024–0111 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0111. 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 individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin 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. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Miller, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2481, email: Ed.Miller@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

During the period from May 1, 2024, to May 31, 2024, the NRC granted two

exemptions in response to requests submitted by the following licensees: Dairyland Power Cooperative; and Portland General Electric Company.

These exemptions temporarily allow the licensee to deviate from certain requirements of part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), “Physical Protection of Plants and Materials,” subpart T, “Security Notifications, Reports, and Recordkeeping.” In support of their exemption requests, the licensees agreed to effect site-specific administrative controls that maintain the approach to complying with 10 CFR part 73 in effect prior to the NRC's issuance of a final rule, “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications,” which was published in the **Federal Register** on March 14, 2023, and became effective on April 13, 2023 (88 FR 15864).

II. Availability of Documents

The tables in this notice provide transparency regarding the number and type of exemptions the NRC has issued and provide the facility name, docket number, document description, document date, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the following tables. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

Document description	Adams accession No.	Document date
Dairyland Power Cooperative; La Crosse Boiling Water Reactor Independent Spent Fuel Storage Installation; Docket Nos. 50–409 and 72–046		
La Crosse Boiling Water Reactor [Independent Spent Fuel Storage Installation]—Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23341A022	November 15, 2023.
Dairyland Power Cooperative [La Crosse Boiling Water Reactor Independent Spent Fuel Storage Installation], Supplemental Information Letter for 10 CFR part 73 Exemption Request—Responses to Request for Confirmatory Information.	ML24121A073	April 16, 2024.
La Crosse Boiling Water Reactor Independent Spent Fuel Storage Installation—Exemption from Select Requirements of 10 CFR part 73.	ML24136A243	May 24, 2024.
Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation; Docket No. 72–017		
Portland General Electric Company [Trojan Independent Spent Fuel Storage Installation]—Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23355A061	December 14, 2023.
Trojan Independent Spent Fuel Storage Installation—Exemption from Select Requirements of 10 CFR part 73.	ML24099A152	May 3, 2024.

Dated: June 20, 2024.

For the Nuclear Regulatory Commission.

Yaira Diaz-Sanabria,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024–13870 Filed 6–24–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–377 and CP2024–385; MC2024–378 and CP2024–386; MC2024–379 and CP2024–387; MC2024–380 and CP2024–388]

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:* June 27, 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
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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):* MC2024–377 and CP2024–385; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 282 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alireza Motameni; *Comments Due:* June 27, 2024.

2. *Docket No(s):* MC2024–378 and CP2024–388; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 283 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alireza Motameni; *Comments Due:* June 27, 2024.

3. *Docket No(s):* MC2024–379 and CP2024–387; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 119 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 18, 2024; *Filing Authority:* 39

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).

U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 27, 2024.

4. *Docket No(s):* MC2024–380 and CP2024–388; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 120 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 27, 2024.

This Notice will be published in the **Federal Register**.

Jennie Jbara,

Primary Certifying Official.

[FR Doc. 2024–13916 Filed 6–24–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100374; File No. SR–NYSE–2024–36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .70 Under NYSE Rule 345A

June 18, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on June 6, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .70 under NYSE Rule 345A to harmonize with recent changes to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 1240.01 reopening the period by which certain participants in the Maintaining Qualifications Program can

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

complete their 2022 and 2023 continuing education content. The proposed rule change is available on the Exchange's website at www.nyse.com, 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 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 Supplementary Material .70 under NYSE Rule 345A (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Section (c) of this Rule) to harmonize with recent changes to FINRA Rule 1240.01 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) reopening the period by which certain participants in the Maintaining Qualifications Program ("MQP") can complete their 2022 and 2023 continuing education ("CE") content. This proposed rule change would harmonize the Exchange's CE rules with those of FINRA and thus promote uniform CE standards across the securities industry.⁴

Background

The continuing education program for registered persons of broker-dealers ("CE Program") set forth in Rule 345A⁵ requires registered persons to complete CE consisting of a Regulatory Element

and a Firm Element. The Regulatory Element, administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

In 2022, the Exchange amended NYSE Rules 1210 (Registration Requirements) and 345A (Continuing Education for Registered Persons) to, among other things, provide eligible individuals terminating 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 known as the MQP.⁶ The MQP under NYSE Rule 345A.70 contains a look-back provision that, subject to specified conditions, extends the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (*i.e.*, the MQP implementation date); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program ("FSAWP") under NYSE Rule 1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member Organization) immediately prior to May 25, 2022 (collectively, the "Look-Back Individuals").⁷

Given that many eligible individuals were unable to participate in the MQP because they failed, for various reasons, to make an election before March 15, 2022, the Exchange provided Look-Back Individuals a second opportunity to elect to participate in the MQP to maintain their qualification in 2023.⁸ Specifically, Rule 345A.70 was amended to provide eligible persons who elected to participate in the CE Program between June 7, 2023, and

December 31, 2023 until March 31, 2024 to complete any prescribed 2022 and 2023 CE. The Exchange's filing was based on FINRA's earlier amendment to Rule 1240.01.⁹

Recently, FINRA again amended its Rule 1240.01 to provide eligible 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 FINRA also amended its rule to provide 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.¹¹

In its filing, FINRA represented that during the process of reaching out to Look-Back Individuals who had enrolled in the MQP but not completed their prescribed CE to remind them of the March 31, 2024 deadline, it noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.¹² FINRA believes that some of those individuals may have been confused by the layout of the FINRA Financial Professional Gateway accounts and 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.¹³

Proposed Rule Change

NYSE Rule 345A.70 provides that eligible persons who elect to participate in the CE Program between June 7, 2023 and December 31, 2023 must complete

⁹ See *id.* See also Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 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). Like FINRA, the Exchange determined to treat the individuals who enrolled during the first period (between January 31, 2022, and March 15, 2022) the same as those who enrolled during the second period (between March 15, 2023 and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content 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.

¹⁰ See Release No. 100067, 89 FR at 40520.

¹¹ See *id.*

¹² See *id.* at 40521.

¹³ See *id.*

⁶ See Securities Exchange Act Release No. 95061 (June 7, 2022), 87 FR 35806 (June 13, 2022) (SR-NYSE-2022-23) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

⁷ The FSAWP is a waiver program for eligible individuals who have left a member organization 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 May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁸ See Securities Exchange Act Release No. 97741 (June 16, 2023), 88 FR 41434 (June 26, 2023) (SR-NYSE-2023-24) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

⁴ 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) ("Release No. 100067").

⁵ See also Commentary .06 to NYSE Rule 1210 (All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education).

any prescribed 2022 and 2023 CE content by March 31, 2024. The Exchange proposes to delete this language as obsolete.

In addition, in order to harmonize with FINRA and avoid any potential regulatory gaps, the Exchange proposes to add the following text (italicized) to Rule 345A.70:

Individuals enrolled in the continuing education program under this Supplementary Material .70 in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024, shall be able to complete such content between [the effective date of filing], and July 1, 2024, to be eligible to continue their participation in the continuing education program. In addition, any such individuals who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024, and [the effective date of filing], shall be deemed to have completed such content by July 1, 2024, for purposes of this Supplementary Material .70.

The proposed text is substantially similar to the language adopted by FINRA in its Rule 1240.01.¹⁴

As discussed below, the Exchange believes that the proposed rule change is eligible for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁷

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA's rules, resulting in less burdensome and

more efficient regulatory compliance. The proposed rule change would provide Look-Back Individuals another opportunity to complete their prescribed 2022 and 2023 CE content in order to remain eligible to continue their participation in the MQP, thereby promoting efficiency because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the Exchange agrees with FINRA that 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.¹⁸ 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, and providing Look-Back Individuals another opportunity to elect to participate in the MQP will further these goals and objectives.

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 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²² 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. NYSE, like FINRA, requests that the proposed rule change become operative as quickly as possible so NYSE can communicate the rule change to impacted individuals in a timely manner. 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, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. 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.²³

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

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ 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).

¹⁴ See Release No. 100067, 89 FR at 40520.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7) & 78f(d).

¹⁸ See Release No. 100067, 89 FR at 40521.

Commission shall institute proceedings under Section 19(b)(2)(B) ²⁴ 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-NYSE-2024-36 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-2024-36. 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-NYSE-2024-36 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13828 Filed 6-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100375; File No. SR-NYSEAMER-2024-39]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Supplementary Material .06 Under NYSE American Rule 341A

June 18, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 17, 2024, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .06 under NYSE American Rule 341A to harmonize with recent changes to Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 1240.01 reopening the period by which certain participants in the Maintaining Qualifications Program can complete their 2022 and 2023 continuing education content. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and 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 Supplementary Material .06 under NYSE American Rule 341A (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Section (c) of this Rule) to harmonize with recent changes to FINRA Rule 1240.01 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) reopening the period by which certain participants in the Maintaining Qualifications Program ("MQP") can complete their 2022 and 2023 continuing education ("CE") content. This proposed rule change would harmonize the Exchange's CE rules with those of FINRA and thus promote uniform CE standards across the securities industry.⁴

Background

The continuing education program for registered persons of broker-dealers ("CE Program") set forth in Rule 341A ⁵ requires registered persons to complete CE consisting of a Regulatory Element and a Firm Element. The Regulatory Element, administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and

⁴ 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) ("Release No. 100067").

⁵ See also Commentary .06 to NYSE American Rule 2.1210 (All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education).

²⁴ 15 U.S.C. 78s(b)(2)(B).

strategies the firm offers, firm policies and industry trends.

In 2022, the Exchange amended NYSE American Rules 2.1210 (Registration Requirements), 341A (Continuing Education for Registered Persons), and 2.21E (Employees of ETP Holders Registrations) to, among other things, provide eligible individuals terminating 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 known as the MQP.⁶ The MQP under NYSE American Rule 341A.06 contains a look-back provision that, subject to specified conditions, extends the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (*i.e.*, the MQP implementation date); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (“FSAWP”) under NYSE American Rule 2.1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member Organization or ETP Holder) immediately prior to May 25, 2022 (collectively, the “Look-Back Individuals”).⁷

Given that many eligible individuals were unable to participate in the MQP because they failed, for various reasons, to make an election before March 15, 2022, the Exchange provided Look-Back Individuals a second opportunity to elect to participate in the MQP to maintain their qualification in 2023.⁸ Specifically, Rule 341A.06 was amended to provide eligible persons who elected to participate in the CE Program between June 5, 2023, and December 31, 2023 until March 31, 2024 to complete any prescribed 2022 and 2023 CE. The Exchange’s filing was

based on FINRA’s earlier amendment to Rule 1240.01.⁹

Recently, FINRA again amended its Rule 1240.01 to provide eligible 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 FINRA also amended its rule to provide 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.¹¹

In its filing, FINRA represented that during the process of reaching out to Look-Back Individuals who had enrolled in the MQP but not completed their prescribed CE to remind them of the March 31, 2024 deadline, it noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.¹² FINRA believes that some of those individuals may have been confused by the layout of the FINRA Financial Professional Gateway accounts and 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.¹³

Proposed Rule Change

NYSE American Rule 341A.06 provides that eligible persons who elect to participate in the CE Program between June 5, 2023 and December 31, 2023 must complete any prescribed 2022 and 2023 CE content by March 31, 2024. The Exchange proposes to delete this language as obsolete.

⁹ See *id.* See also Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 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). Like FINRA, the Exchange determined to treat the individuals who enrolled during the first period (between January 31, 2022, and March 15, 2022) the same as those who enrolled during the second period (between March 15, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content 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.

¹⁰ See Release No. 100067, 89 FR at 40520.

¹¹ See *id.*

¹² See *id.* at 40521.

¹³ See *id.*

In addition, in order to harmonize with FINRA and avoid any potential regulatory gaps, the Exchange proposes to add the following text (*italicized*) to Rule 341A.06:

Individuals enrolled in the continuing education program under this Supplementary Material .06 in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024, shall be able to complete such content between [the effective date of filing], and July 1, 2024, to be eligible to continue their participation in the continuing education program. In addition, any such individuals who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024, and [the effective date of filing], shall be deemed to have completed such content by July 1, 2024, for purposes of this Supplementary Material .06.

The proposed text is substantially similar to the language adopted by FINRA in its Rule 1240.01.¹⁴

As discussed below, the Exchange believes that the proposed rule change is eligible for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁷

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA’s rules, resulting in less burdensome and more efficient regulatory compliance. The proposed rule change would provide Look-Back Individuals another opportunity to complete their

¹⁴ See Release No. 100067, 89 FR at 40520.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7) & 78f(d).

⁶ See Securities Exchange Act Release No. 95064 (June 7, 2022), 87 FR 35812 (June 13, 2022) (SR–NYSEAMER–2022–20) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange’s Rules Regarding Continuing Education Requirements).

⁷ The FSAWP is a waiver program for eligible individuals who have left a member organization or ETP Holder 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 May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁸ See Securities Exchange Act Release No. 97742 (June 16, 2023), 88 FR 41168 (June 23, 2023) (SR–NYSEAMER–2023–33) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange’s Rules Regarding Continuing Education Requirements).

prescribed 2022 and 2023 CE content in order to remain eligible to continue their participation in the MQP, thereby promoting efficiency because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the Exchange agrees with FINRA that 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.¹⁸ 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, and providing Look-Back Individuals another opportunity to elect to participate in the MQP will further these goals and objectives.

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 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² 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. NYSE American, like FINRA, requests that the proposed rule change become operative as quickly as possible so NYSE American can communicate the rule change to impacted individuals in a timely manner. 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, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. 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.²³

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)²⁴ 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-NYSEAMER-2024-39 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-NYSEAMER-2024-39. 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-NYSEAMER-2024-39 and should be submitted on or before July 16, 2024.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ 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).

²⁴ 15 U.S.C. 78s(b)(2)(B).

¹⁸ See Release No. 100067, 89 FR at 40521.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–13836 Filed 6–24–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100364; File No. SR–C2–2024–010]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

June 18, 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 7, 2024, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) 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

Cboe C2 Exchange, Inc. (the “Exchange” or “C2 Options”) 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/ctwo/), 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 relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Trading Permit Holder (“TPH”) or non-TPH to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses the following physical connectivity fees for TPHs and non-TPHs on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–C2–2023–014). On September 1, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–020. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR–C2–2023–021). On October 13, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–022. On December 12, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–025. On February 9, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–004. On April 9, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–005. On June 7, 2024 the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10–Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10–Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

platforms), Cboe EDGX Exchange, Inc. (options and equities platforms), and Cboe EDGA Exchange, Inc., (“Affiliate Exchanges”).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ 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)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

The Exchange operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Fee Guidance”), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

²⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.¹¹ As described in further detail below, the Exchange believes substitutable products¹² are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other options exchanges that trade options or other off-exchange trading platforms.

The 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.¹³ Exchanges themselves are platforms.¹⁴ Particularly, exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform. As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior. And indeed, nothing in the Exchange Act requires the individual examination of specific product fees in isolation. Rather, the Exchange generally requires the rules of an exchange to provide for the “equitable allocation of reasonable dues, fees and other charges among members

and issuers and other persons using its facilities.”¹⁵

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.¹⁶ Since its last increase over 6 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.¹⁷ Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee of \$8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%. Were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of \$9,360, which is 10% more than the Exchange is actually proposing. To further demonstrate, the Exchange notes that \$8,500 in 2024 is equivalent to approximately \$6,800 in 2018, when adjusted for inflation. Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.*, \$7,500) when adjusted for inflation. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate. The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.¹⁸

The Exchange also notes TPHs and non-TPHs will continue to choose the method of connectivity based on their specific needs and no broker-dealer is

required to become a TPH of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 17 registered options exchanges that trade options (13 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.¹⁹ Based on publicly available information, no single options exchange has more than approximately 18% of the market share.²⁰ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.*, Nasdaq MRX, LLC, MIAx Pearl, LLC, MIAx Emerald LLC, and most recently, MEMX LLC).

As noted above, there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange has 52 TPHs (*i.e.*, members) Cboe EDGX has 51 members that trade options, and Cboe

¹¹ See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019 (“Fee Guidance”). The Fee Guidance also recognized that “products need to be substantially similar but not identical to be substitutable.”

¹² A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. See <https://www.investopedia.com/terms/s/substitute.asp>.

¹³ See Fee Guidance.

¹⁴ The Supreme Court in *Ohio v. American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.*, network effects). See *Ohio v. American Express Co.* 138 S. Ct. 2274, 585 U.S. ____ (2018).

¹⁵ See 15 U.S.C. 78f(b)(4).

¹⁶ See Securities and Exchange Release No. 83455 (June 15, 2018), 83 FR 28892 (June 21, 2018) (SR-C2–2018–014).

¹⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1>.

¹⁸ See *e.g.*, *See e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10-Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10-Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹⁹ *Id.*

²⁰ See Cboe Global Markets U.S. Options Market Volume Summary (June 6, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

BZX has 61 members that trade options. There is also no firm that is a member of C2 Options only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 71 members,²¹ and NYSE Arca Options has 69 members,²² MIAX Options has 46 members²³ and MIAX Pearl Options has 40 members.²⁴

A market participant may also submit orders to the Exchange via a TPH broker or a third-party reseller of connectivity. The Exchange notes that third-party non-TPHs also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-TPHs and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.²⁵ The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.*, fee based on number of TPHs that connect to the Exchange indirectly via the third-party).²⁶ Particularly, these third-party resellers may purchase the Exchange's physical ports and resell

access to such ports either alone or as part of a package of services. The Exchange notes that multiple TPHs are able to share a single physical port (and corresponding bandwidth) with other non-affiliated TPHs if purchased through a third-party re-seller.²⁷ This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services. That is, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.*, use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relate to a physical port because such reseller may be providing a third-party reseller as it relate to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.*, providing space, hosting, power, and other long-haul connectivity options). This is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan. These services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive. Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. For example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network. These third-party resellers collectively

maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.²⁸

Accordingly, vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a TPH of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 13 non-Cboe affiliated options markets. Indeed, market participants are free to choose which exchange to use to satisfy their business needs. Moreover, if

²¹ See <https://www.nyse.com/markets/american-options/membership#directory>.

²² See <https://www.nyse.com/markets/arca-options/membership#directory>.

²³ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.

²⁴ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.

²⁵ Third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

²⁶ See, *e.g.*, Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection ([nasdaqtrader.com](https://www.nasdaqtrader.com)); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

²⁷ For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

²⁸ See *e.g.*, See *e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10-Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10-Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

the Exchange were to assess supracompetitive rates, members and non-members alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. For example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan") the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.²⁹ The Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.³⁰

As noted above, exchanges also compete as platforms. In the context of the competition among platforms, different exchanges operate a variety of different business models. In fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products. As discussed above, market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data. For those whose business models necessitate the purchase of some mix of

trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices. Further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. For example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services. As such, demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities. In assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange. When accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.³¹ For example, data has shown that venues with the highest explicit costs (typically inverted and fee-free venues) have the lowest implicit costs from markouts³² and vice versa.³³ Implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).³⁴ Additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on

inverted venues.³⁵ As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6

³¹ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³² Per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider.

³³ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³⁴ See *id.* For example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. As Nasdaq noted, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, when implicit costs are considered, the difference in cost to trade is minimized.

²⁹ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19).

³⁰ *Id.*

³⁵ Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research.

would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its TPHs and continue to compete among other options markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 17 options markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.³⁶ Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity

(which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, TPHs are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress's intent

in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed.”³⁷ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “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.”³⁸ Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”³⁹ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.⁴⁰ Indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. Finally, and importantly, the Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,⁴¹ continual

³⁷ See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ 15 U.S.C. 78f(8).

⁴⁰ See also 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets”); Order, 73 FR at 74781 (“The Exchange Act and its legislative history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.”).

⁴¹ See *e.g.*, letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from

³⁶ See *e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the Commission has historically sought to avoid.

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 proposed fee change will not impact intramarket competition because it will apply to all similarly situated TPHs equally (i.e., all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity

fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The Exchange's proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading. 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.”⁴² 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’”⁴³ 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 Act⁴⁴ and paragraph (f) of Rule 19b-4⁴⁵ 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-C2-2024-010 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-C2-2024-010. This file number should be included on the subject line if email is used. To help the

Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR-EX-2021-14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR-PEARL-2022-18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

⁴² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁴³ *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)).

⁴⁴ 15 U.S.C. 78s(b)(3)(A).

⁴⁵ 17 CFR 240.19b-4(f).

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-C2-2024-010 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13826 Filed 6-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100371; File No. SR-CboeBZX-2024-047]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

June 18, 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 3, 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. (the "Exchange" or "BZX Options") proposes to amend its Fee 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/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 to update its Fee Schedule to provide a 20% discount on fees assessed to Exchange Members and non-Members that purchase \$20,000 or more of historical Open-Close Data, effective June 3, 2024 through June 30, 2024.

By way of background, the Exchange currently offers End-of-Day ("EOD") and Intraday Open-Close Data (collectively, "Open-Close Data"). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The EOD Open-Close Data is proprietary

Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of EOD Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.³ The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. All Open-Close Data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Open-Close Data available for purchase to Members and non-Members on the LiveVol DataShop website (datashop.cboe.com). Customers may currently purchase Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (historical file, e.g., request for Intraday Open-Close Data for month of December 2023 or End-of-Day Open-Close Data for month of December 2023). An ad-hoc request can be for any number of months for which the data is available.

Open-Close Data is subject to direct competition from similar end-of-day and intraday options trading summaries offered by several other options

³ For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots."

⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

exchanges.⁴ All of these exchanges offer essentially the same end-of-day and intraday options trading summary information.

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Open-Close Data will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a 20% discount for ad-hoc purchases of historical Open-Close Data of \$20,000 or more.⁵ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange, including the academic discount provided for Qualifying Academic Purchasers of historical Open-Close Data. The Exchange intends to introduce the discount program beginning June 3, 2024, with the program remaining in effect through June 30, 2024. The Exchange also notes that it previously adopted the same discount program last year and proposes to update the Fees Schedule with the new program dates accordingly.⁶

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes the proposed fee changes will further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Open-Close Data is designed to help investors understand underlying market trends to improve the quality of investment decisions. Indeed, purchasers of the data may be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes Open-Close Data provides a valuable tool that purchasers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer same type of data content through end-of-day or intraday reports.¹⁰

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.¹¹ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.”¹² Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of historical Open-Close Data.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Open-Close Data is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Open-Close Data. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Open-Close Data at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the historical Open-Close Data. Further, the proposed discount is intended to promote increased use of the Exchange’s historical Open-Close Data by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Open-Close Data. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Open-Close Data, and the Exchange is not required to make the historical Open-Close Data available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange previously adopted a similar discount program last year.¹³

⁴ These substitute products are: Nasdaq PHLX Options Trade Outline, Nasdaq Options Trade Outline, ISE Profile, GEMX Trade Profile data; open-close data from C2, Cboe Options, and EDGX; Open Close Reports from MIAx Options, Pearl, and Emerald; and NYSE Options Open-Close Volume Summary.

⁵ The discount will apply on an order-by-order basis. To qualify for the discount, an order must contain End-of-Day Ad-hoc Requests (historical data) and/or Intraday Ad-hoc Requests (historical data) and must total \$20,000 or more; the Exchange will not aggregate purchases made throughout a billing cycle for purposes of the incentive program. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e. receive a 20% discount of \$5,000).

⁶ See Securities Exchange Act Release No. 99027 (November 28, 2023), 88 FR 84028 (December 1, 2023) (SR-CboeBZX–2023–094).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ See supra note 4.

¹¹ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (June 3, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ See Securities Exchange Act Release No. 99027 (November 28, 2023), 88 FR 84028 (December 1, 2023) (SR-CboeBZX–2023–094).

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 Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As discussed above, Open-Close Data is subject to direct competition from several other options exchanges that offer substitutes to Open-Close Data. Moreover, purchase of Open-Close Data is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Open-Close Data.

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 Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-047 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-2024-047. 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 (<http://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-2024-047 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13829 Filed 6-24-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100378; File No. SR-NYSE-2024-34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

June 18, 2024.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on June 3, 2024, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) revise the requirements for market at-the-close ("MOC") and limit at the close ("LOC") orders on MOC/LOC Tier 1 and Tier 2; (2) modify the requirements and charges for D Orders at the close based on time of entry or last modification; and (3) introduce incremental per share credits for orders entered and executed by a Floor broker that add liquidity to the Exchange and for D Orders at the close. The Exchange proposes to implement the fee changes effective June 3, 2024. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) revise the requirements for MOC and LOC orders on MOC/LOC Tier 1 and Tier 2; (2) modify the requirements and charges for D Orders at the close based on time of entry or last modification; and (3) introduce incremental per share credits for orders entered and executed by a Floor broker that add liquidity to the Exchange and for D Orders at the close.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders and closing price orders by revising the requirements and offering additional incentives for member organizations to send liquidity to the Exchange, especially during the Closing Auction. The purpose of the proposed rule change is also to encourage efficient usage of Exchange systems by member organizations by continuing to encourage all member organizations to enter or modify D Orders as early possible, which the Exchange believes is in the best interests of all member organizations and investors who access the Exchange.

The Exchange proposes to implement the fee changes effective June 3, 2024.

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its 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.”⁴

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁵ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁶ numerous alternative trading systems,⁷ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.⁸ Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange’s share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.⁹ It should also be noted that, in the currently highly competitive national market system, numerous exchanges and other order execution venues compete for order flow at the close, and competition for closing orders is robust.¹⁰

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (“Regulation NMS”).

⁵ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

⁶ See Choe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁷ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atslist.htm>.

⁸ See Choe Global Markets U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

⁹ See *id.*

¹⁰ There are at least seven broker-dealer sponsored products competing for volume at the close, including Credit Suisse’s CLOEX; Instinet’s Market-on-Close Cross; Morgan Stanley’s Market-on-Close Aggregator (MOCHA); Bank of America’s Instinct X® and Global Conditional Cross; JP Morgan’s JPB-X; Piper Sandler’s On-Close Match Book; and Goldman Sachs’ One Delta Close Facility (ODCF). Moreover, the percentage of volume at the NYSE closing price in NYSE-listed securities executed off-exchange has been steadily increasing since before the pandemic. In 2018, the percentage of volume at the NYSE closing price in NYSE-listed securities executed off-exchange was 21.3%. In 2019, the percentage increased to 23.5%. After dipping briefly to 22.1% in 2020, the percentage resumed its upward trend and increased to 25.2%

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to this competitive environment, the Exchange has established incentives for member organizations who submit orders on the Exchange. The proposed fee change is designed to provide incentives to member organizations to submit additional such liquidity to the Exchange, including during closing auctions.

Proposed Rule Change

MOC/LOC Tiers 1 and 2

Currently, for MOC/LOC Tier 1, the Exchange charges \$0.0007 per share for MOC orders and \$0.0007 per share for LOC orders from any member organization in the prior three billing months executing (1) an average daily trading volume (“ADV”) of MOC activity on the NYSE of at least 0.45% of NYSE consolidated ADV (“CADV”),¹¹ (2) an ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.7% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization’s total close activity (MOC/LOC and other executions at the close). Similarly, for MOC/LOC Tier 2, the Exchange charges \$0.0008 per share for MOC orders and \$0.0008 per share for LOC orders from any member organization in the prior three billing months executing (1) an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV,¹² (2) an ADV of total

in 2021. The percentage was 24.1% and 23.8% in 2022 and 2023, respectively, and has increased again in 2024 to 26.1% through May 31.

¹¹ ADV and CADV are defined in footnote * of the Price List. The Exchange would delete “[Tape A]” between NYSE and CADV in one place in the tier as redundant. The Exchange would also add “and an” between the remaining requirements to qualify for the tier.

¹² The Exchange would similarly delete “[Tape A]” between NYSE and CADV in two places in the tier as redundant and add “and an” between the

Continued

close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.525% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close).

The Exchange proposes to eliminate the third requirement from both tiers.

As proposed for MOC/LOC Tier 1, the Exchange would charge \$0.0007 per share for MOC orders and \$0.0007 per share for LOC orders from any member organization in the prior three billing months executing an (1) ADV of MOC activity on the NYSE of at least 0.45% of NYSE CADV, and (2) ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.7% of NYSE CADV. The current rates would remain the same.

As proposed for MOC/LOC Tier 2, the Exchange would charge \$0.0008 per share for MOC orders and \$0.0008 per share for LOC orders from any member organization in the prior three billing months executing an (1) an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV, and (2) an ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.525% of NYSE CADV. The current rates would also remain the same.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct orders in NYSE-listed securities, including at the close, by modifying requirements in order to facilitate member organizations qualifying for a MOC/LOC tier and encourage additional liquidity to the Exchange. Higher volumes of MOC and LOC orders contribute to the quality of the Exchange's closing auction and provide market participants whose orders are executed at the close with a greater opportunity for execution, which benefits all market participants.

D Orders

Currently, the Exchange does not charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for D Orders, Floor broker executions swept into the close, and executions at the close, excluding MOC Orders, LOC Orders and Closing Offset ("CO") Orders. Further, the Exchange currently charges certain fees differentiated by time of entry (or last modification) for D Orders at the close after the first 750,000 ADV of aggregate of executions at the close by a member organization.

remaining requirements to qualify for this tier as proposed for Tier 1.

The Exchange proposes to no longer exclude the first 750,000 ADV of the aggregate of executions at the close by member organizations for D Orders, Floor broker executions swept into the close, and executions at the close, excluding MOC Orders, LOC Orders and CO Orders. As discussed below, the Exchange would waive fees for member organizations with an ADV of at least 10,000 shares entered and executed by an affiliated Floor broker up to specific ADV levels based on time of entry (or last modification) in an effort to encourage additional liquidity on the trading floor of a national securities exchange.

The Exchange also proposes to modify the time of entry (or last modification) for D Order fee determination in order to encourage member organizations to enter D Orders earlier in the trading day, thereby increasing transparency in the Closing Auction and reducing member organization's operational risk. Consistent with this purpose, the current rates for D Orders would not change with the exception of D Orders entered in the final minute of trading, which the Exchange proposes to label as "Late D Orders."

The Exchange would modify the current requirements and charges for D Orders as follows:

- The Exchange currently charges \$0.0003 per share for executed D Orders last modified¹³ by the member organization earlier than 25 minutes before the scheduled close of trading. The Exchange proposes to charge the current rate to D Orders last modified earlier than 10 minutes before the scheduled close of trading. The Exchange would define these orders as "Early D Orders."

- The Exchange currently charges \$0.0007 per share for executed D Orders last modified by the member organization from 25 minutes up to but not including 3 minutes before the scheduled close of trading. The Exchange proposes to charge the current rate to D Orders last modified from 10 minutes up to but not including 1 minute before the scheduled close of trading. The Exchange would define these orders as "Mid D Orders."

- For D Orders last modified in the last 3 minutes before the scheduled close of trading, the Exchange charges three different fees. The Exchange proposes to charge these fees, as modified, for D Orders last modified by

the member organization in the last 1 minute before the scheduled close of trading, which the Exchange would define as "Late D Orders."

- The Exchange currently charges \$0.0008 per share for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for member organizations in MOC/LOC Tiers 1 and 2, both with Adding ADV of at least 0.50% of Tape A CADV or MOC/LOC Tiers 1, 2 or 3 with Adding ADV of at least 1.05% of Tape A CADV. The Exchange would eliminate the limitation to member organizations in MOC/LOC Tiers 1 and 2 and would charge \$0.0011 per share for executed D Orders last modified in the last 1 minute before the scheduled close of trading for member organizations with Adding ADV of at least 0.50% of Tape A CADV (unchanged from the current requirement) and total close activity of at least 1.75% of Tape A CADV.

- The Exchange currently charges \$0.0009 per share for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for member organizations in MOC/LOC Tiers 1, 2 and 3 with Adding ADV of at least 0.65% of Tape A CADV. The Exchange would eliminate this fee.

- The Exchange currently charges \$0.0010 per share for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for all other member organizations. The Exchange proposes to charge all other member organizations \$0.0012 per share for executed D Orders last modified one minute before the scheduled close of trading.

- For member organizations with an ADV of at least 10,000 shares entered and executed by an affiliated Floor broker,¹⁴ the Exchange proposes that Early, Mid- and Late D Orders up to specific ADV levels would be free. Qualifying member organizations would be charged the previously described rates for all volume for each D Order type above the proposed thresholds.

As proposed, qualifying member organizations would not be charged for the first 500,000 shares of Early D Orders, with the above rates for Early D Orders applicable to all volume above that threshold.

For Mid D Orders, qualifying member organizations would not be charged for the first 750,000 shares, with the above

¹³ As set forth in footnote 10 to the Price List, as used in the Price List, the phrase "last modified" means the later of the order's entry time or the final modification or cancellation time for any D Order designated for the close with the same broker badge, entering firm mnemonic, symbol, and side.

¹⁴ For purposes of the proposed change, an affiliated Floor broker would be a Floor broker under 75% common ownership or control of the member organization. The Price List defines "affiliate" as any member organization under 75% common ownership or control of that member organization. See Price List, General, Section I (Billing Disputes).

rates for Mid D Orders applicable to all volume above that threshold.

Finally, for Late D Orders, qualifying member organizations would not be charged for the first 250,000 shares, with the above rates for Late D Orders applicable to all volume above that threshold.

- Orders from continuous trading swept into the close would continue to be charged the current rate of \$0.0008.

The purpose of these changes is to continue to encourage additional liquidity on the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Since the proposal not to charge Early, Mid- and Late D Orders up to specific ADV levels for member organizations with a minimum ADV entered and executed by an affiliated Floor broker would be new, the Exchange does not know how many member organizations could qualify based on their current trading profile and if they choose to direct order flow to the Exchange. Based on the profile of member organizations and their liquidity provision, the Exchange believes that additional member organizations could qualify for the discounts if they choose to direct order flow to the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the discounts.

Incremental Floor Broker Credits

As part of what the Exchange proposes to call the "Floor Broker Incentive and Rebate Program," the Exchange proposes an incremental per share credit for orders executed by a Floor broker in addition to the preceding fees and credits specified in the Price List. Specifically, the Exchange proposes that orders executed by a member organization's Floor broker would receive an additional \$0.0002 per share for orders that add liquidity to the Exchange, other than MPL and Non-Displayed Limit Orders, and/or (2) an additional \$0.000025 per share for the proposed Early, Mid-and Late D Orders where the member organization has (1) an ADV of at least 10,000 shares entered and executed by its Floor broker, and (2) an ADV comprised of at least 50% Floor broker ADV of the member organization's total ADV, excluding routing.

For example, assume that Member Organization A enters and executes 2

million shares that add liquidity on the trading Floor though its Floor broker. Further assume that a second member organization, Member Organization B, enters 10 million shares that add liquidity and routes it flow to Member Organization A for execution on the trading Floor though Member Organization A's Floor broker. Both member organizations receive the current rate for adding liquidity on the trading Floor of at least \$0.0019 per share for their shares entered as the entering firm, unless a better current tiered rate applies. Under the proposed pricing, Member Organization A would also receive an additional credit of \$0.0002 for executing the 10 million shares for adding liquidity on the trading Floor on behalf of Member Organization B.

The purpose of the proposed incremental Floor broker credits is to continue to encourage member organizations to send orders to trading Floor for execution, thereby contributing to robust levels of liquidity, especially for adding liquidity and during the Closing Auction, which benefits all market participants. Members and member organizations benefit from the substantial amounts of liquidity present on the Exchange during the close. The Exchange believes the proposed change would also thereby promote price discovery and transparency, and enhance order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange both intraday and during the close.

Since the proposed incremental credits are new, the Exchange does not know how many member organizations could qualify for the new discounts based on their current trading profile and if they choose to direct order flow to the Exchange. Based on the profile of liquidity-adding firms generally, the Exchange believes that a number of member organizations could qualify for the credits if they choose to direct order flow to the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the discounts.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁵ in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,¹⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its 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."¹⁷ While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."¹⁸

The Proposed Change Is Reasonable

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity to the Exchange, especially during the Closing Auction, and improve the Exchange's market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by member organizations, which would benefit all market participants by offering greater price discovery and an increased opportunities to trade on the Exchange, both intraday and during the Closing Auction. The proposed rule change also

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) & (5).

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

¹⁸ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

represents a reasonable attempt to encourage efficient usage of Exchange systems by member organizations by continuing to encourage all member organizations to enter or modify D Orders as early as possible, which the Exchange believes is in the best interests of all member organizations and investors who access the Exchange.

MOC/LOC Tiers 1 and 2

The Exchange believes that eliminating the requirement that a member organization's MOC activity comprise at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close) in order to qualify for to qualify for MOC/LOC Tier 1 and Tier 2 is a reasonable way to encourage greater participation which leads to greater marketable and other liquidity at the Closing Auction. MOC and LOC orders contribute meaningfully to the price and size discovery, which is the hallmark of the closing auction process. Higher volumes of MOC orders contribute to the quality of the Exchange's Closing Auction and provide market participants whose orders are executed at the close with a greater opportunity for execution, which benefits all market participants. Further, as noted above, in the currently highly competitive national market system, competition for closing orders among exchanges, ATSS and other market execution venues is robust.

D Orders

The Exchange believes that it [sic] proposal would encourage additional liquidity on the Exchange from multiple sources, which helps to maintain the quality of the Exchange's Closing Auction for the benefit of all market participants.

Specifically, the Exchange believes that no longer exempting the first 750,000 ADV of the aggregate of executions at the close from fees is reasonable as it has not operated as originally intended. Member organizations that currently reach the 750,000 ADV threshold are generally larger member organizations that would continue to derive a substantial benefit from the high volume of closing executions on the Exchange and the Exchange believes would continue to send orders to send orders to the Exchange. While the Exchange is removing the first 750,000 ADV exemption, it notes that it is introducing a new exemption for qualifying member organizations with a Floor broker, which totals 1.5 million shares across Early-, Mid- and Late D Orders. Similarly, the Exchange believes that

not charging Early, Mid- and Late D Orders up to specific ADV levels for member organizations with a minimum ADV entered and executed by an affiliated Floor broker would encourage additional liquidity for execution on the trading Floor in the Closing Auction, thereby contributing to robust levels of liquidity on the Floor and at the close, which benefits all market participants. Moreover, the proposed fee exemptions for Early, Mid- and Late D Orders would incentivize qualifying member organizations to enter or modify D Orders as early as possible in order to avoid fees for Early, Mid-, and Late D Orders up to the proposed thresholds for each.

Similarly, the Exchange believes that modifying the time of entry for last modification for member organizations to qualify for the existing fees for Early, Mid- and Late D Orders encourages all member organizations to enter or modify D Orders as early as possible, beginning with as early as up to 10 minutes before the close of trading, in order to build up liquidity going into the Closing Auction. Member organizations are waiting until later in the trading day to enter and/or modify D Orders than the current 25 minutes. By expanding the time period to enter Early D Orders to up to 10 minutes before the close, the Exchange hopes to encourage member organizations to send D Orders earlier in order to qualify for lower fees. Moreover, the Exchange hopes thereby to incentivize more member organizations to send adding liquidity to the Exchange, which in turn supports the quality of price discovery on the Exchange. In addition, charging member organizations higher rates for entering or modifying their interest in the final minute of regular trading hours reflects a risk premium for delaying entry or modification until nearly the end of trading, while reducing the time entry which results in fewer trades qualifying for these higher fees. Further, it is reasonable to charge member organizations a lower rate based on a higher percentage of Adding ADV of Tape A CADV and total close activity of Tape A CADV for entering or modifying their interest in the final minute of regular trading hours because such interest most benefits from the flexibility afforded the order type. The Exchange notes that while the proposed fee for Late D-Orders is higher than the current fee, the proposed increase in time of order entry or last modified to qualify for Early- and Mid D Orders, which have lower rates than Late D Orders, will result in lower overall fees for member organizations, and

incentivize greater liquidity in the Closing Auction, which benefits all market participants.

Incremental Floor Broker Credits

The Exchange believes that the proposed additional credits for orders executed by a Floor broker for representation on the Exchange is a reasonable way to encourage additional liquidity, including D Orders, on the Exchange both during intraday and in Closing Auction because member organizations benefit from the substantial amounts of liquidity that are present on the Exchange during such times. The Exchange believes the proposed change would encourage member organizations to send orders to the trading Floor for execution, thereby contributing to robust levels of liquidity on the trading Floor both intraday and during the Closing Auction, which benefits all market participants. The proposed fee would also encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange during the closing. The proposed change would also encourage the execution of such transactions on a public exchange, thereby promoting price discovery and transparency. Moreover, the Exchange believes that requiring an ADV comprised of at least 50% Floor broker ADV of the member organization's total ADV is reasonable because it would encourage member organizations that make a substantial contribution to trading Floor liquidity without excluding smaller member organizations.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

MOC/LOC Tiers 1 and 2

The Exchange believes that the proposed elimination of the requirement that a member organization's MOC activity comprise at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close) in order to

qualify for to qualify for MOC/LOC Tier 1 and Tier 2 will incentivize member organizations to send additional liquidity to achieve lower fees and encourage greater marketable and other liquidity at the closing auction. Higher volumes of MOC and LOC orders contribute to the quality of the Exchange's Closing Auction and provide market participants whose orders are executed in the close with a greater opportunity for execution of orders on the Exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated member organizations that utilize MOC and LOC orders on the Exchange on an equal basis.

D Orders

The Exchange believes that the proposed changes to D Orders are an equitable allocation of fees because the proposed changes, taken together, will incentivize member organizations to enter or modify D Orders as early as possible, beginning with as early as up to 10 minutes before the close of trading, in order to build up liquidity going into the closing auction. The Exchange's closing auction is a recognized industry benchmark,¹⁹ and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis. The Exchange also believes that it is equitable to charge member organizations a higher rate for entering or modifying their interest in the final minute of regular trading hours because such interest most benefits from the flexibility afforded the order type. Moreover, the proposed fees are equitable because all similarly situated member organizations will be subject to the same fee structure that would be available on an equal basis to all similarly situated member organizations that utilize D Orders on the Exchange. In this regard, the proposed changes are equitable because any member organization can choose to send D Orders earlier than 10 minutes or 1 minute prior to the close in order to qualify for lower fees, and any member organization can choose to have an affiliated Floor broker in order to qualify for the lower fee for Late D Orders or to exclude volume from fees up to the

proposed specified thresholds for Early, Mid- and Late D Orders.

Incremental Floor Broker Credits

The proposed incremental credits for orders executed by a member organization's Floor broker that add liquidity to the Exchange and D Orders during the close, are equitable because the incremental fees would be available on an equal basis to all similarly situated member organizations that operate a Floor brokerage business. In this regard, the proposed discounts and requirements are equitable because any member organization can choose to increase their adding volume entered and executed by its Floor broker, excluding routing, in order to qualify for the proposed incremental credits and any member organization can choose to operate as a Floor broker in order to qualify for the additional credits on an equal basis. The Exchange notes that the current Incremental Discounts on MOC Orders utilize similar requirements.²⁰

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

MOC/LOC Tiers 1 and 2

The proposed streamlined requirements for MOC orders to qualify for MOC/LOC Tiers 1 and 2 are not unfairly discriminatory because the requirements would be applied to all similarly situated member organizations and other market participants, who would all be subject to the same fees, requirements and discounts on a full and equal basis. For the same reason, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

D Orders

The Exchange believes that the proposed changes to D Orders to modify

the time periods by which such orders are considered early, mid-or late is not unfairly discriminatory because the proposed change would be because the proposed changes, will incentivize member organizations to enter or modify D Orders as early as possible, beginning with as early as up to 10 minutes before the close of trading, in order to build up liquidity going into the closing auction. The Exchange also believes that it is not unfairly discriminatory to charge member organizations a higher rate for entering or modifying their interest in the final minute of regular trading hours because all member organizations can utilize D Orders and all have an equal choice as to when to submit those order to benefit most from the flexibility afforded the order type. The Exchange believes that the proposal is not unfairly discriminatory because all similarly situated member organizations that submit D Orders last modified in the last 10 minutes and less before the scheduled close of trading will be subject to the same fee structure based on time of entry (or last modification).

Incremental Floor Broker Credits

The proposed incremental Floor broker credits are not unfairly discriminatory because the proposed fees would be applied to all similarly situated member organizations and other market participants operating a Floor brokerage business, who would all be subject to the same fees, requirements, and discounts on an equal basis. For the same reason, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, the Exchange believes the proposal would incentivize member organizations to send more orders to the Floor in order to qualify for incremental credits. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,²¹ the Exchange believes that the

¹⁹ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

²⁰ See NYSE Price List at p. 4, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

²¹ 15 U.S.C. 78f(b)(8).

proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²²

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which 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. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)²³ of the Act and paragraph (f) 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-34 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-2024-34. 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-2024-34 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-13827 Filed 6-24-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100370; File No. SR-CBOE-2024-025]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

June 18, 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 3, 2024, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") 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 Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²² See Regulation NMS, 70 FR at 37498-99.

²³ 15 U.S.C. 78s(b)(3)(A).

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 update its Fee Schedule to provide a 20% discount on fees assessed to Exchange Trading Permit Holders and non-Trading Permit Holders that purchase \$20,000 or more of historical Open-Close Data, effective June 3, 2024 through June 30, 2024.

By way of background, the Exchange currently offers End-of-Day ("EOD") and Intraday Open-Close Data (collectively, "Open-Close Data"). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The EOD Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of EOD Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each

10-minute period.³ The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. All Open-Close Data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Open-Close Data available for purchase to Trading Permit Holders and non-Trading Permit Holders on the LiveVol DataShop website (datashop.cboe.com). Customers may currently purchase Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (historical file, e.g., request for Intraday Open-Close Data for month of December 2023 or End-of-Day Open-Close Data for month of December 2023). An ad-hoc request can be for any number of months for which the data is available.

Open-Close Data is subject to direct competition from similar end-of-day and intraday options trading summaries offered by several other options exchanges.⁴ All of these exchanges offer essentially the same end-of-day and intraday options trading summary information.

The Exchange proposes to provide a temporary pricing incentive program in which Trading Permit Holders or Non-Trading Permit Holders that purchase historical Open-Close Data will receive

³ For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots."

⁴ These substitute products are: Nasdaq PHLX Options Trade Outline, Nasdaq Options Trade Outline, ISE Profile, GEMX Trade Profile data; open-close data from C2, EDGX, and BZX; Open Close Reports from MIAAX Options, Pearl, and Emerald; and NYSE Options Open-Close Volume Summary.

a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a 20% discount for ad-hoc purchases of historical Open-Close Data of \$20,000 or more.⁵ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange, including the academic discount provided for Qualifying Academic Purchasers of historical Open-Close Data. The Exchange intends to introduce the discount program beginning June 3, 2024, with the program remaining in effect through June 30, 2024.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique

⁵ The discount will apply on an order-by-order basis. To qualify for the discount, an order must contain End-of-Day Ad-hoc Requests (historical data) and/or Intraday Ad-hoc Requests (historical data) and must total \$20,000 or more; the Exchange will not aggregate purchases made throughout a billing cycle for purposes of the incentive program. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e. receive a 20% discount of \$5,000).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes the proposed fee changes will further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Open-Close Data is designed to help investors understand underlying market trends to improve the quality of investment decisions. Indeed, purchasers of the data may be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes Open-Close Data provides a valuable tool that purchasers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer same type of data content through end-of-day or intraday reports.⁹

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.¹⁰ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.”¹¹ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result

of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of historical Open-Close Data.

The Exchange believes that the proposed incentive program for any Trading Permit Holder or non-Trading Permit Holder who purchases historical Open-Close Data is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Open-Close Data. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Open-Close Data at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the historical Open-Close Data. Further, the proposed discount is intended to promote increased use of the Exchange’s historical Open-Close Data by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Trading Permit Holders and non-Trading Permit Holders who purchase historical Open-Close Data. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Open-Close Data, and the Exchange is not required to make the historical Open-Close Data available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. The Exchange also notes that it previously adopted a similar discount program.¹²

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 Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As discussed above, Open-Close Data is subject to direct competition from

several other options exchanges that offer substitutes to Open-Close Data. Moreover, purchase of Open-Close Data is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Open-Close Data.

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 Act¹³ and paragraph (f) of Rule 19b-4¹⁴ 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:

⁹ See supra note 4.

¹⁰ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (June 3, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹² See Securities Exchange Act Release No. 99028 (November 28, 2023), 88 FR 84002 (December 1, 2023) (SR-CBOE-2023-061).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-025 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-CBOE-2024-025. 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 (<http://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-CBOE-2024-025 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-13832 Filed 6-24-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100380; File No. SR-NYSECHX-2024-23]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Interpretations and Policies .07 Under NYSE Chicago Article 6, Rule 11

June 18, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 6, 2024, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretations and Policies .07 under NYSE Chicago Article 6, Rule 11 to harmonize with recent changes to Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 1240.01 reopening the period by which certain participants in the Maintaining Qualifications Program can complete their 2022 and 2023 continuing education content. The proposed rule change is available on the Exchange's website at www.nyse.com, 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 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 Interpretations and Policies .07 under NYSE Chicago Article 6, Rule 11 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Section (c) of this Rule) to harmonize with recent changes to FINRA Rule 1240.01 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) reopening the period by which certain participants in the Maintaining Qualifications Program ("MQP") can complete their 2022 and 2023 continuing education ("CE") content. This proposed rule change would harmonize the Exchange's CE rules with those of FINRA and thus promote uniform CE standards across the securities industry.⁴

Background

The continuing education program for registered persons of broker-dealers ("CE Program") set forth in Article 6, Rule 11⁵ requires registered persons to complete CE consisting of a Regulatory Element and a Firm Element. The Regulatory Element, administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

In 2022, the Exchange amended NYSE Chicago Article 6, Rule 11 (Continuing Education for Registered Persons) and Rule 13 (Registration Requirements) to, among other things, provide eligible individuals terminating 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 known as the MQP.⁶ The MQP under

⁴ 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) ("Release No. 100067").

⁵ See also Interpretations and Policies .06 to Article 6, Rule 13 (All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education).

⁶ See Securities Exchange Act Release No. 95063 (June 7, 2022), 87 FR 35826 (June 13, 2022) (SR-

Continued

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Article 6, Rule 11, Interpretations and Policies .07 contains a look-back provision that, subject to specified conditions, extends the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (*i.e.*, the MQP implementation date); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (“FSAWP”) under NYSE Chicago Rule 13, Interpretations and Policies .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Participant) immediately prior to May 25, 2022 (collectively, the “Look-Back Individuals”).⁷

Given that many eligible individuals were unable to participate in the MQP because they failed, for various reasons, to make an election before March 15, 2022, the Exchange provided Look-Back Individuals a second opportunity to elect to participate in the MQP to maintain their qualification in 2023.⁸ Specifically, Article 6, Rule 11, Interpretations and Policies .07, was amended to provide eligible persons who elected to participate in the CE Program between June 5, 2023, and December 31, 2023 until March 31, 2024 to complete any prescribed 2022 and 2023 CE. The Exchange’s filing was based on FINRA’s earlier amendment to Rule 1240.01.⁹

NYSECHX–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange’s Rules Regarding Continuing Education Requirements).

⁷ The FSAWP is a waiver program for eligible individuals who have left a Participant 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 May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁸ See Securities Exchange Act Release No. 97744 (June 16, 2023), 88 FR 41173 (June 23, 2023) (SR–NYSECHX–2023–13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange’s Rules Regarding Continuing Education Requirements).

⁹ See *id.* See also Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 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). Like FINRA, the Exchange determined to treat the individuals who enrolled during the first period (between January 31, 2022, and March 15, 2022) the same as those who enrolled during the second period (between March 15, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content 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

Recently, FINRA again amended its Rule 1240.01 to provide eligible 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 FINRA also amended its rule to provide 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.¹¹

In its filing, FINRA represented that during the process of reaching out to Look-Back Individuals who had enrolled in the MQP but not completed their prescribed CE to remind them of the March 31, 2024 deadline, it noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.¹² FINRA believes that some of those individuals may have been confused by the layout of the FINRA Financial Professional Gateway accounts and 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.¹³

Proposed Rule Change

Article 6, Rule 11, Interpretations and Policies .07, provides that eligible persons who elect to participate in the CE Program between June 5, 2023 and December 31, 2023 must complete any prescribed 2022 and 2023 CE content by March 31, 2024. The Exchange proposes to delete this language as obsolete.

In addition, in order to harmonize with FINRA and avoid any potential regulatory gaps, the Exchange proposes to add the following text (*italicized*) to Article 6, Rule 11, Interpretations and Policies .07:

Individuals enrolled in the continuing education program under this Interpretations and Policies .07 in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024, shall be able to complete such content between [the effective date of filing], and July 1, 2024, to be eligible to continue their participation in the continuing education program. In addition, any such

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.

¹⁰ See Release No. 100067, 89 FR at 40520.

¹¹ See *id.*

¹² See *id.* at 40521.

¹³ See *id.*

individuals who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024, and [the effective date of filing], shall be deemed to have completed such content by July 1, 2024, for purposes of this Interpretations and Policies .07.

The proposed text is substantially similar to the language adopted by FINRA in its Rule 1240.01.¹⁴

As discussed below, the Exchange believes that the proposed rule change is eligible for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁷

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA’s rules, resulting in less burdensome and more efficient regulatory compliance. The proposed rule change would provide Look-Back Individuals another opportunity to complete their prescribed 2022 and 2023 CE content in order to remain eligible to continue their participation in the MQP, thereby promoting efficiency because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the Exchange agrees with FINRA that 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

¹⁴ See Release No. 100067, 89 FR at 40520.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7) & 78f(d).

diverse group of professionals.¹⁸ 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, and providing Look-Back Individuals another opportunity to elect to participate in the MQP will further these goals and objectives.

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 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² 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. NYSE Chicago, like FINRA, requests that the proposed rule change become operative as quickly as possible so NYSE Chicago can communicate the rule change to impacted individuals in a timely manner. 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, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. 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.²³

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)²⁴ 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-NYSECHX-2024-23 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-NYSECHX-2024-23. 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-NYSECHX-2024-23 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13831 Filed 6-24-24; 8:45 am]

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²⁵ 17 CFR 200.30-3(a)(12).

¹⁸ See Release No. 100067, 89 FR at 40521.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ 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).

²⁴ 15 U.S.C. 78s(b)(2)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100363; File No. SR–CboeBZX–2024–052]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related To Physical Port Fees

June 18, 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 7, 2024, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) 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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX Options”) 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/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

The Exchange proposes to amend its fee schedule relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc. (“Affiliate

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeBZX–2023–047). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–068. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeBZX–2023–79). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–083. On December 12, 2023 the Exchange withdrew that filing and submitted SR–CboeBZX–2023–104. On February 9, 2024, the Exchange withdrew that filing and submitted SR–CboeBZX–2024–017. On April 9, 2024, the Exchange withdrew that filing and submitted this SR–CboeBZX–2024–028. On April 18, 2024, the Exchange withdrew that filing and submitted SR–CboeBZX–2024–030. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10 Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10 Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

Exchanges’).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁸ 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)⁹ 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)¹⁰ 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 operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Fee Guidance”), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

a proposed fee.¹¹ As described in further detail below, the Exchange believes substitutable products¹² are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other options exchanges that trade options or other off-exchange trading platforms.

The 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.¹³ Exchanges themselves are platforms.¹⁴ Particularly, exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform. As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior. And indeed, nothing in the Exchange Act requires the individual examination of specific product fees in isolation. Rather, the Exchange generally requires the rules of an exchange to provide for the “equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.”¹⁵

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.¹⁶ Since its last increase over 6 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.¹⁷ Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee of \$8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%. Were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of \$9,360, which is 10% more than the Exchange is actually proposing. To further demonstrate, the Exchange notes that \$8,500 in 2024 is equivalent to approximately \$6,800 in 2018, when adjusted for inflation. Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.*, \$7,500) when adjusted for inflation. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate. The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.¹⁸

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no

regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 17 registered options exchanges that trade options (13 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.¹⁹ Based on publicly available information, no single options exchange has more than approximately 18% of the market share.²⁰ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.*, Nasdaq MRX, LLC, MIAx Pearl, LLC, MIAx Emerald LLC, and most recently, MEMX LLC).

As noted above, there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange has 61 members that trade options, Cboe EDGX has 51 members that trade options, and Cboe C2 has 52 Trading Permit Holders (“TPHs”) (*i.e.*, members). There is also

¹¹ See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019 (“Fee Guidance”). The Fee Guidance also recognized that “products need to be substantially similar but not identical to be substitutable.”

¹² A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar enough to another product. See <https://www.investopedia.com/terms/s/substitute.asp>.

¹³ See Fee Guidance.

¹⁴ The Supreme Court in *Ohio v. American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.*, network effects). See *Ohio v. American Express Co.* 138 S. Ct. 2274, 585 U.S. (2018).

¹⁵ See 15 U.S.C. 78f(b)(4).

¹⁶ See Securities and Exchange Release No. 83429 (June 14, 2018), 83 FR 28685 (June 20, 2018) (SR-CboeBZX-2018-038).

¹⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1>.

¹⁸ See *e.g.*, *See e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10 Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹⁹ *Id.*

²⁰ See Cboe Global Markets U.S. Options Market Volume Summary (June 6, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

no firm that is a Member of BZX Options only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 71 members,²¹ and NYSE Arca Options has 69 members,²² MIAX Options has 46 members²³ and MIAX Pearl Options has 40 members.²⁴

A market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. The Exchange notes that third-party non-Members also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.²⁵ The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.*, fee based on number of Members that connect to the Exchange indirectly via the third-party).²⁶ Particularly, these third-party resellers may purchase the Exchange's physical ports and resell

access to such ports either alone or as part of a package of services. The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party reseller.²⁷ This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services. That is, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.*, use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relate to a physical port because such reseller may be providing a third-party reseller as it relate to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.*, providing space, hosting, power, and other long-haul connectivity options). This is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan. These services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive. Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. For example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network. These

third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.²⁸

Accordingly, vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 13 non-Cboe affiliated options markets. Indeed, market participants are free to choose which exchange to use to satisfy their

²¹ See <https://www.nyse.com/markets/american-options/membership#directory>.

²² See <https://www.nyse.com/markets/arca-options/membership#directory>.

²³ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.

²⁴ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.

²⁵ Third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

²⁶ See, *e.g.*, Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, U.S. Direct-Extranet Connection ([nasdaqtrader.com](https://www.nasdaqtrader.com)); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

²⁷ For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

²⁸ See *e.g.*, *See e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10 Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

business needs. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. For example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan") the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.²⁹ The Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.³⁰

As noted above, exchanges also compete as platforms. In the context of the competition among platforms, different exchanges operate a variety of different business models. In fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products. As discussed above, market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data. For those whose business models

necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices. Further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. For example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services. As such, demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities. In assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange. When accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.³¹ For example, data has shown that venues with the highest explicit costs (typically inverted and fee-free venues) have the lowest implicit costs from markouts³² and vice versa.³³ Implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).³⁴ Additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on

inverted venues.³⁵ As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6

³¹ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³² Per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider.

³³ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³⁴ See *id.* For example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. As Nasdaq noted, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, when implicit costs are considered, the difference in cost to trade is minimized.

³⁵ Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research.

²⁹ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19).

³⁰ *Id.*

would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 17 options markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.³⁶ Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity

(which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress's intent

in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed.”³⁷ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “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.”³⁸ Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”³⁹ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.⁴⁰ Indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. Finally, and importantly, the Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,⁴¹ continual

³⁷ See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ 15 U.S.C. 78f(8).

⁴⁰ See also 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets”); Order, 73 FR at 74781 (“The Exchange Act and its legislative history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.”).

⁴¹ See *e.g.*, letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from

³⁶ See *e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by section 11A of the Exchange Act and which the Commission has historically sought to avoid.

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 proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity

fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The Exchange's proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading. 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.”⁴² 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’”⁴³ 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 Act⁴⁴ and paragraph (f) of Rule 19b-4⁴⁵ 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-2024-052 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-2024-052. This file number should be included on the subject line if email is used. To help the

Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR-IEEX-2021-14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR-PEARL-2022-18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

⁴² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁴³ *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)).

⁴⁴ 15 U.S.C. 78s(b)(3)(A).

⁴⁵ 17 CFR 240.19b-4(f).

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-2024-052 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13833 Filed 6-24-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100377; File No. SR-NYSEARCA-2024-52]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Commentary .07 Under NYSE Arca Rule 2.23 and Commentary .07 Under NYSE Arca Rule 2.24

June 18, 2024.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 7, 2024, NYSE Arca, Inc. ("NYSE Arca" or

the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .07 under NYSE Arca Rule 2.23 and Commentary .07 under NYSE Arca Rule 2.24 to harmonize with recent changes to Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 1240.01 reopening the period by which certain participants in the Maintaining Qualifications Program can complete their 2022 and 2023 continuing education content. The proposed rule change is available on the Exchange's website at www.nyse.com, 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 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 Commentary .07 under NYSE Arca Rule 2.23 (Registration—OTPS) and Commentary .07 under NYSE Arca Rule 2.24 (Registration—Employees of ETP Holders) to harmonize with recent changes to FINRA Rule 1240.01 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) reopening the period by which certain participants in the Maintaining Qualifications Program ("MQP") can complete their 2022 and 2023 continuing education ("CE") content. This proposed rule change

would harmonize the Exchange's CE rules with those of FINRA and thus promote uniform CE standards across the securities industry.⁴

Background

The continuing education program for registered persons of broker-dealers ("CE Program") set forth in Rules 2.23 and 2.24⁵ requires registered persons to complete CE consisting of a Regulatory Element and a Firm Element. The Regulatory Element, administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

In 2022, the Exchange amended NYSE Arca Rules 2.1210 (Registration Requirements), 2.23 (Registration—OTPs), and 2.24 (Registration—Employees of ETP Holders) to, among other things, provide eligible individuals terminating 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 known as the MQP.⁶ The MQP under NYSE Arca Rules 2.23, Commentary .07, and 2.24, Commentary .07, contains a look-back provision that, subject to specified conditions, extends the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (*i.e.*, the MQP implementation date); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program ("FSAWP") under NYSE Arca Rule 2.1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of an ETP Holder, OTP Holder or OTP Firm) immediately prior to May

⁴ 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) ("Release No. 100067").

⁵ See also Commentary .06 to Rule 2.1210 (All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education).

⁶ See Securities Exchange Act Release No. 95065 (June 7, 2022), 87 FR 35820 (June 13, 2022) (SR-NYSEARCA-2022-32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

25, 2022 (collectively, the “Look-Back Individuals”).⁷

Given that many eligible individuals were unable to participate in the MQP because they failed, for various reasons, to make an election before March 15, 2022, the Exchange provided Look-Back Individuals a second opportunity to elect to participate in the MQP to maintain their qualification in 2023.⁸ Specifically, NYSE Arca Rules 2.23, Commentary .07, and 2.24, Commentary .07, were amended to provide eligible persons who elected to participate in the CE Program between June 5, 2023, and December 31, 2023 until March 31, 2024 to complete any prescribed 2022 and 2023 CE. The Exchange’s filing was based on FINRA’s earlier amendment to Rule 1240.01.⁹

Recently, FINRA again amended its Rule 1240.01 to provide eligible 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 FINRA also amended its rule to provide 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.¹¹

⁷ The FSAWP is a waiver program for eligible individuals who have left an ETP Holder, OTP Holder or OTP 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 May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁸ See Securities Exchange Act Release No. 97743 (June 16, 2023), 88 FR 41176 (June 23, 2023) (SR–NYSEARCA–2023–43) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange’s Rules Regarding Continuing Education Requirements).

⁹ See *id.* See also Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 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). Like FINRA, the Exchange determined to treat the individuals who enrolled during the first period (between January 31, 2022, and March 15, 2022) the same as those who enrolled during the second period (between March 15, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content 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.

¹⁰ See Release No. 100067, 89 FR at 40520.

¹¹ See *id.*

In its filing, FINRA represented that during the process of reaching out to Look-Back Individuals who had enrolled in the MQP but not completed their prescribed CE to remind them of the March 31, 2024 deadline, it noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.¹² FINRA believes that some of those individuals may have been confused by the layout of the FINRA Financial Professional Gateway accounts and 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.¹³

Proposed Rule Change

NYSE Arca Rules 2.23, Commentary .07 and 2.24, Commentary .07 provide that eligible persons who elect to participate in the CE Program between June 5, 2023 and December 31, 2023 must complete any prescribed 2022 and 2023 CE content by March 31, 2024. The Exchange proposes to delete this language in both rules as obsolete.

In addition, in order to harmonize with FINRA and avoid any potential regulatory gaps, the Exchange proposes to add the following text (italicized) to Rule 2.23, Commentary .07:

Individuals enrolled in the continuing education program under this Commentary .07 in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024, shall be able to complete such content between [the effective date of filing], and July 1, 2024, to be eligible to continue their participation in the continuing education program. In addition, any such individuals who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024, and [the effective date of filing], shall be deemed to have completed such content by July 1, 2024, for purposes of this Commentary .07.

Similarly, the Exchange proposes to add the following text (italicized) to Rule 2.24, Commentary .07:

Individuals enrolled in the continuing education program under this Commentary .07 in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024, shall be able to complete such content between [the effective date of filing], and July 1, 2024, to be eligible to continue their participation in the continuing education program. In addition, any such individuals who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024, and [the effective date of filing], shall be deemed to have

completed such content by July 1, 2024, for purposes of this Commentary .07.

The proposed text in both rules is substantially similar to the language adopted by FINRA in its Rule 1240.01.¹⁴

As discussed below, the Exchange believes that the proposed rule change is eligible for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,¹⁵ in general, and furthers the objectives of section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with sections 6(b)(7) and 6(d) of the Act.¹⁷

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA’s rules, resulting in less burdensome and more efficient regulatory compliance. The proposed rule change would provide Look-Back Individuals another opportunity to complete their prescribed 2022 and 2023 CE content in order to remain eligible to continue their participation in the MQP, thereby promoting efficiency because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the Exchange agrees with FINRA that 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.¹⁸ The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the

¹⁴ See Release No. 100067, 89 FR at 40520.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7) & 78f(d).

¹⁸ See Release No. 100067, 89 FR at 40521.

individuals working in the industry. The Exchange believes that reopening the CE completion period, as proposed, and providing Look-Back Individuals another opportunity to elect to participate in the MQP will further these goals and objectives.

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 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²² 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. NYSE Arca, like FINRA, requests that the proposed rule change become operative as quickly as possible so NYSE Arca can communicate the rule change to impacted individuals in a timely manner. 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, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. 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.²³

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)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-52 on subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2024-52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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-NYSEARCA-2024-52 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13834 Filed 6-24-24; 8:45 am]

BILLING CODE 8011-01-P

²⁵ 17 CFR 200.30-3(a)(12).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ 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).

²⁴ 15 U.S.C. 78s(b)(2)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100366; File No. SR–CboeEDGX–2024–036]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

June 18, 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 7, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) 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.

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 relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., (“Affiliate

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeEDGX–2023–045). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–058. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeEDGX–2023–063). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–064. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–080. On February 12, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–014. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–021. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

Exchanges’).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ 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)¹⁰ 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 operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Fee Guidance”), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

a proposed fee.¹¹ As described in further detail below, the Exchange believes substitutable products¹² are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other options exchanges that trade options or other off-exchange trading platforms.

The 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.¹³ Exchanges themselves are platforms.¹⁴ Particularly, exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform. As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior. And indeed, nothing in the Exchange Act requires the individual examination of specific product fees in isolation. Rather, the Exchange generally requires the rules of an exchange to provide for the “equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.”¹⁵

¹¹ See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019 (“Fee Guidance”). The Fee Guidance also recognized that “products need to be substantially similar but not identical to be substitutable.”

¹² A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar enough to another product. See <https://www.investopedia.com/terms/s/substitute.asp>.

¹³ See Fee Guidance.

¹⁴ The Supreme Court in *Ohio v. American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (i.e., network effects). See *Ohio v. American Express Co.* 138 S. Ct. 2274, 585 U.S. (2018).

¹⁵ See 15 U.S.C. 78f(b)(4).

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.¹⁶ Since its last increase over 6 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.¹⁷ Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee of \$8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%. Were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of \$9,360, which is 10% more than the Exchange is actually proposing. To further demonstrate, the Exchange notes that \$8,500 in 2024 is equivalent to approximately \$6,800 in 2018, when adjusted for inflation. Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (i.e., \$7,500) when adjusted for inflation. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate. The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.¹⁸

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no

¹⁶ See Securities and Exchange Release No. 83430 (June 14, 2018), 83 FR 28697 (June 20, 2018) (SR-CboeEDGX-2018-017).

¹⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1>.

¹⁸ See e.g., *See e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 17 registered options exchanges that trade options (13 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.¹⁹ Based on publicly available information, no single options exchange has more than approximately 18% of the market share.²⁰ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (i.e., Nasdaq MRX, LLC, MIAx Pearl, LLC, MIAx Emerald LLC, and most recently, MEMX LLC).

As noted above, there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange has 51 members that trade options, Cboe BZX has 61 members that trade options, and Cboe C2 has 52 Trading Permit Holders (“TPHs”) (i.e., members). There is also

¹⁹ *Id.*

²⁰ See Cboe Global Markets U.S. Options Market Volume Summary (June 6, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

no firm that is a Member of EDGX Options only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 71 members,²¹ and NYSE Arca Options has 69 members,²² MIAX Options has 46 members²³ and MIAX Pearl Options has 40 members.²⁴

A market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. The Exchange notes that third-party non-Members also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.²⁵ The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.*, fee based on number of Members that connect to the Exchange indirectly via the third-party).²⁶ Particularly, these third-party resellers may purchase the Exchange's physical ports and resell

access to such ports either alone or as part of a package of services. The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party reseller.²⁷ This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services. That is, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.*, use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relate to a physical port because such reseller may be providing a third-party reseller as it relate to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.*, providing space, hosting, power, and other long-haul connectivity options). This is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan. These services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive. Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. For example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network. These

third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.²⁸

Accordingly, vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 13 non-Cboe affiliated options markets. Indeed, market participants are free to choose which exchange to use to satisfy their

²¹ See <https://www.nyse.com/markets/american-options/membership#directory>.

²² See <https://www.nyse.com/markets/arca-options/membership#directory>.

²³ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.

²⁴ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.

²⁵ Third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

²⁶ See, *e.g.*, Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection ([nasdaqtrader.com](https://www.nasdaqtrader.com)); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

²⁷ For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

²⁸ See *e.g.*, *See e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

business needs. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. For example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan") the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.²⁹ The Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.³⁰

As noted above, exchanges also compete as platforms. In the context of the competition among platforms, different exchanges operate a variety of different business models. In fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products. As discussed above, market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data. For those whose business models

necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices. Further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. For example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services. As such, demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities. In assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange. When accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.³¹ For example, data has shown that venues with the highest explicit costs (typically inverted and fee-free venues) have the lowest implicit costs from markouts³² and vice versa.³³ Implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).³⁴ Additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on

inverted venues.³⁵ As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6

³¹ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³² Per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider.

³³ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³⁴ See *id.* For example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. As Nasdaq noted, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, when implicit costs are considered, the difference in cost to trade is minimized.

³⁵ Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research.

²⁹ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19).

³⁰ *Id.*

would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 17 options markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.³⁶ Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity

(which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. . Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress's intent

in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed.”³⁷ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “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.”³⁸ Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”³⁹ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.⁴⁰ Indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. Finally, and importantly, the Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,⁴¹ continual

³⁷ See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ 15 U.S.C. 78f(8).

⁴⁰ See also 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets”); Order, 73 FR at 74781 (“The Exchange Act and its legislative history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.”).

⁴¹ See *e.g.*, letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary,

³⁶ See *e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the Commission has historically sought to avoid.

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 proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.

Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. ("Virtu"), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. *See also* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR-IEEX-2021-14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR-PEARL-2022-18) (Notice of Filing of a Proposed Rule Change To Amend the MIAx PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAx Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The Exchange's proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading. 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."⁴² 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

⁴² *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."⁴³ 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 Act⁴⁴ and paragraph (f) of Rule 19b-4⁴⁵ 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-2024-036 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-2024-036. This

⁴³ *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)).

⁴⁴ 15 U.S.C. 78s(b)(3)(A).

⁴⁵ 17 CFR 240.19b-4(f).

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-2024-036 and should be submitted on or before June 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-13830 Filed 6-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100384; File No. SR-NYSENAT-2024-19]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Commentary .09 under NYSE National Rule 2.2

June 18, 2024.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on June 6, 2024, NYSE National, Inc. ("NYSE

National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .09 under NYSE National Rule 2.2 to harmonize with recent changes to Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 1240.01 reopening the period by which certain participants in the Maintaining Qualifications Program can complete their 2022 and 2023 continuing education content. The proposed rule change is available on the Exchange's website at www.nyse.com, 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 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 Commentary .09 under NYSE National Rule 2.2 (Obligations of ETP Holders and the Exchange) to harmonize with recent changes to FINRA Rule 1240.01 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) reopening the period by which certain participants in the Maintaining Qualifications Program ("MQP") can complete their 2022 and 2023 continuing education ("CE") content. This proposed rule change would harmonize the Exchange's CE rules with those of FINRA and thus

promote uniform CE standards across the securities industry.⁴

Background

The continuing education program for registered persons of broker-dealers ("CE Program") set forth in Rule 2.2(e)⁵ requires registered persons to complete CE consisting of a Regulatory Element and a Firm Element. The Regulatory Element, administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

In 2022, the Exchange amended NYSE National Rules 2.1210 (Registration Requirements) and 2.2(e) (Continuing Education Requirements) to, among other things, provide eligible individuals terminating 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 known as the MQP.⁶ The MQP under NYSE National Rule 2.2, Commentary .09 contains a look-back provision that, subject to specified conditions, extends the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (*i.e.*, the MQP implementation date); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program ("FSAWP") under NYSE National Rule 2.1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member Organization) immediately prior to May 25, 2022 (collectively, the "Look-Back Individuals").⁷

⁴ 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) ("Release No. 100067").

⁵ See also Commentary .06 to Rule 2.1210 (All Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education).

⁶ See Securities Exchange Act Release No. 95062 (June 7, 2022), 87 FR 35836 (June 13, 2022) (SR-NYSENAT-2022-07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

⁷ The FSAWP is a waiver program for eligible individuals who have left a member organization to work for a foreign or domestic financial services affiliate of a member firm. The Exchange stopped

Continued

⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Given that many eligible individuals were unable to participate in the MQP because they failed, for various reasons, to make an election before March 15, 2022, the Exchange provided Look-Back Individuals a second opportunity to elect to participate in the MQP to maintain their qualification in 2023.⁸ Specifically, Rule 2.2, Commentary .09 was amended to provide eligible persons who elected to participate in the CE Program between June 5, 2023, and December 31, 2023 until March 31, 2024 to complete any prescribed 2022 and 2023 CE. The Exchange's filing was based on FINRA's earlier amendment to Rule 1240.01.⁹

Recently, FINRA again amended its Rule 1240.01 to provide eligible 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 FINRA also amended its rule to provide 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.¹¹

In its filing, FINRA represented that during the process of reaching out to Look-Back Individuals who had enrolled in the MQP but not completed their prescribed CE to remind them of the March 31, 2024 deadline, it noticed

accepting new participants for the FSAWP beginning on May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁸ See Securities Exchange Act Release No. 97745 (June 16, 2023), 88 FR 41162 (June 23, 2023) (SR-NYSE/NAT-2023-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

⁹ See *id.* See also Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 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). Like FINRA, the Exchange determined to treat the individuals who enrolled during the first period (between January 31, 2022, and March 15, 2022) the same as those who enrolled during the second period (between March 15, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content 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.

¹⁰ See Release No. 100067, 89 FR at 40520.

¹¹ See *id.*

that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.¹² FINRA believes that some of those individuals may have been confused by the layout of the FINRA Financial Professional Gateway accounts and 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.¹³

Proposed Rule Change

NYSE National Rule 2.2, Commentary .09 provides that eligible persons who elect to participate in the CE Program between June 5, 2023 and December 31, 2023 must complete any prescribed 2022 and 2023 CE content by March 31, 2024. The Exchange proposes to delete this language as obsolete.

In addition, in order to harmonize with FINRA and avoid any potential regulatory gaps, the Exchange proposes to add the following text (italicized) to Rule 2.2, Commentary .09:

Individuals enrolled in the continuing education program under this Commentary .09 in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024, shall be able to complete such content between [the effective date of filing], and July 1, 2024, to be eligible to continue their participation in the continuing education program. In addition, any such individuals who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024, and [the effective date of filing], shall be deemed to have completed such content by July 1, 2024, for purposes of this Commentary .09.

The proposed text is substantially similar to the language adopted by FINRA in its Rule 1240.01.¹⁴

As discussed below, the Exchange believes that the proposed rule change is eligible for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,¹⁵ in general, and furthers the objectives of section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with sections 6(b)(7) and 6(d) of the Act.¹⁷

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA's rules, resulting in less burdensome and more efficient regulatory compliance. The proposed rule change would provide Look-Back Individuals another opportunity to complete their prescribed 2022 and 2023 CE content in order to remain eligible to continue their participation in the MQP, thereby promoting efficiency because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the Exchange agrees with FINRA that 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.¹⁸ 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, and providing Look-Back Individuals another opportunity to elect to participate in the MQP will further these goals and objectives.

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 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

¹² See *id.* at 40521.

¹³ See *id.*

¹⁴ See Release No. 100067, 89 FR at 40520.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7) & 78f(d).

¹⁸ See Release No. 100067, 89 FR at 40521.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² 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. NYSE National, like FINRA, requests that the proposed rule change become operative as quickly as possible so NYSE National can communicate the rule change to impacted individuals in a timely manner. 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, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. 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.²³

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)²⁴ 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-NYSENAT-2024-19 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-NYSENAT-2024-19. 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-NYSENAT-2024-19 and should be submitted on or before July 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-13837 Filed 6-24-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20327 and #20328; FLORIDA Disaster Number FL-20005]

Presidential Declaration of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Florida (FEMA-4794-DR), dated 06/17/2024.

Incident: Severe Storms, Straight-Line Winds, and Tornadoes.

Incident Period: 05/10/2024.

DATES: Issued on 06/17/2024.

Physical Loan Application Deadline Date: 08/16/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/17/2025.

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 President's major disaster declaration on

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ 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).

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ 17 CFR 200.30-3(a)(12).

06/17/2024, 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 (Physical Damage and Economic Injury Loans): Leon.

Contiguous Counties (Economic Injury Loans Only):

Florida: Gadsden, Jefferson, Liberty, Wakulla

Georgia: Grady, Thomas

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
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
<i>For Economic Injury:</i>	
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 20327C and for economic injury is 203280.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-13869 Filed 6-24-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20403 and #20404; FLORIDA Disaster Number FL-20006]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA-4794-DR), dated 06/17/2024.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 05/10/2024.

DATES: Issued on 06/17/2024.

Physical Loan Application Deadline Date: 08/16/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/17/2025.

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 President's major disaster declaration on 06/17/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Baker, Gadsden, Hamilton, Lafayette, Leon, Liberty, Madison, Suwannee, Taylor, Wakulla.

The Interest Rates are:

	percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 20403C and for economic injury is 204040.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-13871 Filed 6-24-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12429]

Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

AGENCY: Bureau of Political-Military Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment under the International Traffic in Arms Regulations (ITAR) on persons convicted of violating, or conspiracy to violate, the Arms Export Control Act (AECA).

DATES: Debarment imposed as of June 25, 2024.

FOR FURTHER INFORMATION CONTACT: Jae E. Shin, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State: (202) 623-2785.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), restricts the Department of State from issuing licenses for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating the AECA or certain other statutes enumerated in section 38(g)(1) of the AECA, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. The Department refers to this restriction as a limitation on "export privileges" and implements this presumption of denial through section 127.11 of the ITAR.

In addition, section 127.7(b) of the ITAR provides for "statutory debarment" of any person who has been convicted of violating or conspiring to violate the AECA. Under this policy, persons subject to statutory debarment are prohibited from participating directly or indirectly in any activities that are regulated by the ITAR. Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States court, and as such the administrative debarment procedures outlined in part 128 of the ITAR are not applicable.

It is the policy of the Department of State that statutory debarment as described in section 127.7(b) of the ITAR lasts for a three-year period following the date of conviction and to prohibit that person from participating directly or indirectly in any activities that are regulated by the ITAR.

Reinstatement from the policy of statutory debarment is not automatic, and in all cases the debarred person must submit a request to the Department of State and be approved for reinstatement from statutory debarment before engaging in any activities subject to the ITAR.

The Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the statutory debarment. In response to a request for reinstatement from statutory debarment, the Department may determine either to rescind only the statutory debarment pursuant to section 127.7(b) of the ITAR, or to both rescind the statutory debarment pursuant to section 127.7(b) of the ITAR and reinstate export privileges as described in section 127.11 of the ITAR. See 84 FR 7411 (March 4, 2019) for discussion of the Department's policy regarding actions to both rescind the statutory debarment and reinstate export privileges. The reinstatement of export privileges may be made only after the statutory requirements of section 38(g)(4) of the AECA have been satisfied.

Certain exceptions, known as transaction exceptions, may be made to this debarment determination on a case-by-case basis. However, such an exception may be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement from the statutory debarment.

Pursuant to section 38(g)(4) of the AECA and section 127.7(b) and (c)(1) of the ITAR, the following persons, having been convicted in a U.S. District Court, are denied export privileges, and are statutorily debarred as of the date of this notice (Name; Date of Judgment; Judicial District; Case No.; Month/Year of Birth):

Akem, Roger; a.k.a. Akembuom, Roger; May 22, 2023; District of Maryland; 1:20-cr-00150; July 1970.

Al Eyani, Fares Abdo; April 2, 2024; Northern District of California; 3:22-cr-00278; January 1983.

Bangarie, Tse Ernst; April 18, 2023; District of Maryland; 1:21-cr-00277; August 1975.

Chang, En-Wei Eric; March 26, 2024; District of Maryland; 1:03-cr-00090; November 1975.

Fonguh, Wilson Che; May 25, 2023; District of Maryland; 1:21-cr-00334; February 1982.

Mancho, Godlove; May 2, 2023; District of Maryland; 1:21-cr-00322; November 1978.

Nevidomy, Vladimir; June 5, 2018; Southern District of Florida; 1:17-cr-20407; April 1986.

Ngang, Edith; April 20, 2023; District of Maryland; 1:21-cr-00195; January 1966.

Ngomanji, Anye Collins; a.k.a. Niba, Anye Collins; June 6, 2023; District of Maryland; 1:21-cr-00292; May 1978.

Nji, Eric Fru; March 22, 2023; District of Maryland; 1:21-cr-00334; February 1981.

Panchernikov, Igor; a.k.a. Maru, Mike; Panchernikov, Igor Vladimir; Panchernikov, Igor Vladimirovich; Panchernikov, Igor; June 26, 2023; Central District of California; 2:21-cr-00259; July 1981.

Roggio, Ross; April 16, 2024; Middle District of Pennsylvania; 3:18-cr-00097; December 1968.

Sendino, Luis Guillermo; December 20, 2023; Northern District of California; 5:20-cr-00458; March 1972.

Sery, Dror; January 29, 2024; Southern District of California; 3:21-cr-02898; April 1952.

St. Michael, Tamufor Nchumuluh; June 16, 2023; District of Maryland; 1:20-cr-00015; September 1980.

Tita, Wilson Nuyila; April 5, 2023; District of Maryland; 1:21-cr-00334; October 1975.

At the end of the three-year period following the date of this notice, the above-named persons remain debarred unless a request for reinstatement from statutory debarment is approved by the Department of State.

Pursuant to section 120.16(c) of the ITAR, debarred persons are generally ineligible to participate in activities regulated under the ITAR. Also, under section 127.1(d) of the ITAR, any person who has knowledge that another person is ineligible pursuant to section 120.16(c) of the ITAR may not, without prior disclosure of the facts to and written authorization from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any manner or capacity, in any ITAR-controlled transaction where such ineligible person may obtain benefit

therefrom or have a direct or indirect interest therein.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and any export from or temporary import into the United States of defense articles, technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Jessica A. Lewis,

Assistant Secretary, Bureau of Political Military Affairs, Department of State.

[FR Doc. 2024-13878 Filed 6-24-24; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

NextGen Advisory Committee; Charter Renewal

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of NextGen Advisory Committee (NAC) charter renewal.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the renewal of the NAC for two years. The Secretary of Transportation established the NAC under agency authority in accordance with the provisions of the Federal Advisory Committee Act, as amended. The Secretary determined the NAC is necessary and is in the public interest. The nature and purpose of the NAC is to seek resolution of issues and challenges involving concepts, requirements, operational capabilities, the associated use of technology, and related considerations to aeronautical operations that affect the future of the Air Traffic Management System and the integration of new technologies.

FOR FURTHER INFORMATION CONTACT: Any committee-related request should be sent to Kimberly Noonan, Manager, Stakeholder and Collaboration Division, at Kimberly.Noonan@faa.gov or 202-267-3760.

SUPPLEMENTARY INFORMATION: Pursuant to section 14 of the Federal Advisory Committee Act, FAA is giving notice of the renewal of the NAC charter. The primary goals of the NAC are to provide advice on agency-level issues facing the

aviation community in implementing the Next Generation Air Transportation System (NextGen) modernization efforts across the National Airspace System. NAC membership is structured to maintain a deliberately balanced distribution of the aviation community representation in order for FAA to align its investments. Complete information regarding the NAC is available on the FAA website at https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/.

Issued in Washington, DC, this 20th day of June 2024.

Kimberly Noonan,

Manager, Stakeholder and Collaboration, Management Services Office, ANG-A, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2024-13879 Filed 6-24-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2010-0152]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated April 15, 2024, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). The relevant Docket Number is FRA-2010-0152.¹

Specifically, Amtrak requests relief required to continue participation in FRA's C³RS Program. Amtrak seeks to continue shielding reporting employees from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)-(4); 240.305(a)(1)-(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)-(4), (e)(6)-(11), (f)(1)-(2); and 242.407. The C³RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the

incidents reported per the C³RS Implementing Memorandum of Understanding (IMOU). In support of its request, Amtrak states that "its employees are currently covered by three separate" MOUs (BLET and SMART-TD, ADTA and TCU, and Mechanical Crafts) that "cover all Amtrak owned or controlled property and the entire Northeast Corridor, provided the host railroad(s) is/are [C³RS] participants." Additionally, Amtrak states that it "remains confident that . . . the extension of these waivers are vital components of railroad safety and a symbol of [Amtrak's] continuing support of the [C³RS] program."

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at www.regulations.gov. Follow the online instructions for submitting comments.

Communications received by August 26, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024-13867 Filed 6-24-24; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2022-0067]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letters received January 12, 2024, and May 22, 2024, Illinois Central Railroad Company, a subsidiary of Canadian National Railway Company (CN), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). The relevant Docket Number is FRA-2022-0067.

Specifically, CN seeks relief from the requirements of 49 CFR 232.305(b)(2), *Single car air brake tests*, to "permit the replacement of non-FRA condemnable wheelsets on rail cars as part of an in-train wheelset replacement program without the need to also perform the [single car air brake test (SCABT)]" as required. The existing wheelset replacement program which "identifies and replaces wheel-sets with minor defects, which are condemnable under [Association of American Railroads] standards," operates under a waiver in Docket Number FRA-2019-0003 for a facility in Fulton, Kentucky. CN states that the program has been "a resounding success." CN seeks to add a new location, Memphis, Tennessee, to its wheelset replacement program. The Memphis location would be "an alternative location to perform repairs and wheel-set replacements under an SCABT waiver[,] so as to avoid trains queuing at Fulton for work pursuant to" the waiver in Docket Number FRA-2019-0003 granted for the Fulton location.

In support of its request, CN states that "the repairs conducted and wheels changed out under the SCABT waiver have made a huge contribution to preventing and reducing the number of wheel, bearing, impact, and broken rail-caused derailments, as well as associated injuries." CN adds that the program "will improve safety by

¹ Formerly, Amtrak received relief in separate docket numbers: FRA-2010-0152 (part 240) and FRA-2012-0054 (part 242). Henceforth, FRA will process Amtrak's request for relief from both parts 240 and 242 for the Confidential Close Call Reporting System (C³RS) in Docket Number FRA-2010-0152.

significantly reducing the number of switching events required to replace wheel-sets as CN will no longer have to remove cars from trains at this location and place them in specialized repair tracks to replace the wheel-set.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at www.regulations.gov. Follow the online instructions for submitting comments.

Communications received by August 26, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the Department of Transportation’s (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,
Associate Administrator for Railroad Safety,
Chief Safety Officer.

[FR Doc. 2024–13866 Filed 6–24–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0096]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated April 10, 2024, New Jersey Transit Rail Operations (NJT) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). The relevant Docket Number is FRA–2009–0096.¹

Specifically, NJT requests relief required to continue participation in FRA’s C³RS Program. NJT seeks to continue shielding reporting employees from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C³RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C³RS Implementing Memorandum of Understanding (IMOU). NJT states that although the Brotherhood of Locomotive Engineers (BLET)² withdrew its participation from NJT’s C³RS program on June 3, 2022, BLET now wishes to reestablish its participation in the program. In support of its request, NJT states that it “has invested and will continue to invest substantial resources in coaching and refresher training for its employees.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate

¹ Formerly, NJT received relief in separate docket numbers: FRA–2009–0096 (part 240) and FRA–2012–0056 (part 242). Henceforth, FRA will process NJT’s request for relief from both parts 240 and 242 for the Confidential Close Call Reporting System (C³RS) in Docket Number FRA–2009–0096.

² Employees represented by BLET, in addition to those represented by SMART United Transportation Union and the American Train Dispatchers Association, were included in the implementing Memorandum of Understanding signed on October 10, 2014.

scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at www.regulations.gov. Follow the online instructions for submitting comments.

Communications received by August 26, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the Department of Transportation’s (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,
Associate Administrator for Railroad Safety,
Chief Safety Officer.

[FR Doc. 2024–13862 Filed 6–24–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Decommissioning and Disposition of the National Historic Landmark Nuclear Ship Savannah; Notice of Cancellation of July Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) announces that due to scheduling conflicts, the previously planned July 16, 2024, public meeting of the Peer Review Group (PRG) will not take place. The next PRG public meeting will take place on September 17, 2024.

The PRG was established pursuant to the requirements of the National Historic Preservation Act (NHPA) and its implementing regulations to plan for the decommissioning and disposition of the Nuclear Ship Savannah (NSS). PRG membership is comprised of officials from the U.S. Department of Transportation, MARAD, the U.S. Nuclear Regulatory Commission (NRC), the Advisory Council on Historic Preservation (ACHP), and the Maryland State Historic Preservation Officer (SHPO) and other consulting parties.

FOR FURTHER INFORMATION CONTACT:

Erhard W. Koehler, (202) 680–2066 or via email at marad.history@dot.gov. You may send mail to N.S. Savannah/ Savannah Technical Staff, Pier 13 Canton Marine Terminal, 4601 Newgate Avenue, Baltimore, MD 21224, ATTN: Erhard Koehler.

SUPPLEMENTARY INFORMATION:

I. Background

The decommissioning and disposition of the NSS is an Undertaking under Section 106 of the NHPA. Section 106 requires that federal agencies consider views of the public regarding their Undertakings; therefore, in 2020, MARAD established a Federal docket at <https://www.regulations.gov/docket/MARAD-2020-0133> to provide public notice about the NSS Undertaking. The federal docket was also used in 2021 to solicit public comments on the future uses of the NSS. MARAD is continuing to use this same docket to take in public comment, share information, and post agency actions.

The NHPA Programmatic Agreement (PA) for the Decommissioning and Disposition of the NSS is available on the MARAD docket located at www.regulations.gov under docket id “MARAD-2020-0133.” The PA stipulates a deliberative process by which MARAD will consider the disposition of the NSS. This process requires MARAD to make an affirmative, good-faith effort to preserve the NSS. The PA also establishes the PRG in Stipulation II. The PRG is the mechanism for continuing consultation during the effective period of the PA and its members consist of the signatories and concurring parties to the PA, as well as other consulting parties. The PRG members will provide individual input and guidance to MARAD regarding the implementation of stipulations in the PA.

PRG members and members of the public are invited to provide input by attending bi-monthly meetings and reviewing and commenting on

deliverables developed as part of the PA.

(Authority: 49 CFR 1.81 and 1.93; 36 CFR part 800; 5 U.S.C. 552b.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–13899 Filed 6–24–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2024–0015]

Privacy Act of 1974; System of Records

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, Department of Transportation (DOT).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the United States Department of Transportation (DOT), Office of the Secretary (OST), proposes to modify and reissue an existing system of records notice titled “Department of Transportation, Office of the Secretary; DOT/OST 035 Personnel Security Record System.” The system collects information on DOT employees, contractors, and members of the public to track and manage the information and records necessary to conduct employee suitability background investigations and determine eligibility for clearances. It is also used to maintain documentation for DOT employees who attend classified briefings outside of DOT, and non-DOT individuals attending meetings at DOT.

DATES: Submit comments on or before July 25, 2024. The Department may publish an amended Systems of Records Notice (hereafter “Notice”) in light of any comments received. This modified system will be effective immediately and the modified routine uses will be effective July 25, 2024.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2024–0015 by one of the following methods:

- *Federal e-Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Department of Transportation Docket Management, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9

a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number DOT–OST–2024–0015. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Karyn Gorman, Departmental Chief Privacy Officer, Department of Transportation, S–83, Washington, DC 20590, Email: privacy@dot.gov, Tel. (202) 366–3140.

SUPPLEMENTARY INFORMATION:

Notice Updates

This Notice includes both substantive changes and non-substantive changes to the previously published Notice. Substantive changes have been made to the system location, system manager, authority for maintenance of the system, purposes, categories of individuals, categories of records, the record source categories, the routine uses of records maintained in the system, policies and practices for storage of records, policies and practices for retrieval of records, policies and practices for retention and disposal of records, administrative, technical and physical safeguards.

Non-substantive changes have been made to record access procedures, contesting record procedures, notification procedures, as well as revisions to align with the requirements of Office of Management and Budget Memoranda (OMB) A–108 and to ensure consistency with other Notices issued by the Department of Transportation.

Background

In accordance with the Privacy Act of 1974, the Department of Transportation proposes to update and reissue an existing system of records titled “DOT/OST 35 Personnel Security Record System.” This Notice covers information required for conducting and managing investigations for all federal and contract employees to obtain a badge, credential, or a national security

clearance as mandated by Executive Order 12968, as amended, "Access to Classified Information". Records in this system are collected, maintained, and used to track and manage the information and records necessary to conduct employee suitability background investigations and determine eligibility for clearances. In addition, records in this system are also used to maintain documentation for DOT employees who attend classified briefings outside of DOT, and non-DOT individuals attending classified meetings at DOT. The following substantive changes have been made to the Notice:

1. *System Location*: This Notice updates the system location to reflect the current location where individual records are submitted and processed to determine eligibility for clearances, conduct suitability background investigations and maintain documentation for DOT and non-DOT employees who attend classified briefings at DOT and outside of DOT. The previously published SORN identified a location that is no longer valid. All records covered in this Notice are maintained at the Department of Transportation, Office of the Secretary, 1200 New Jersey Ave SE, Suite W12-180, Washington DC 20590.

2. *System Manager*: This Notice updates the system manager to reflect to reflect current system Manager and inform the public the previous System Manager address is no longer valid. The new address is Principal, Office of Security, M-40, 1200 New Jersey Ave SE, Suite W12-180, Washington DC 20590.

3. *Authority*: This Notice updates the authorities to include additional authorities that cover the system of records and align with the requirements. The additional authorities include E.O. 12829; E.O. 12968, E.O. 13467; E.O. 13764; E.O. 9397, as amended by E.O. 13478; Security Executive Agent Directive 3; Security Executive Agent Directive 6; Security Executive Agent Directive 7; Homeland Security Presidential Directive 12; and National Industrial Security Program Operating Manual DoD 5220.22-M. These authorities establish the requirements for federal agencies to conduct initial and ongoing background suitability investigations of individuals seeking employment with or access to federal facilities and information systems. Investigations have been conducted under these authorities and they are consistent with the purposes of the published SORN.

4. *Purpose*: This Notice updates the purpose to better clarify purpose of the

system, identify additional data captured in the system, how the data is used, and maintained.

5. *Categories of Individuals*: This Notice updates the categories of individuals to reflect that information is collected from the members of the public, citizens and legal permanent residents, visitors to DOT for official business, detailees to DOT, current and former federal employees, and members of DOT contract workforce.

6. *Categories of Records*: This Notice updates categories of records collected in the system. The categories of records have been updated to include specifically individuals' names, date of birth, Social Security Numbers (SSNs), home address, and additional records that may assist in conducting employee suitability background investigations to determine eligibility for clearances.

7. *Records Source*: This Notice updates records source category and includes additional information collected directly from individuals and from other sources that are maintained in this system of records.

8. *Routine Uses*: This Notice updates routine uses to include the Department of Transportation's specific and general routine uses that specifically apply to this system and align with the purpose of the collection and maintenance of the data in the system. Also included are the routine uses that require agencies to share information in the event of an incident or breach in accordance with the OMB Memorandum M-17-12. OMB directed agencies to include routine uses that will permit sharing of information when needed to investigate, respond to, and mitigate a breach of a Federal information system.

9. *Records Storage*: This Notice updates the policies and practices for storage of records to reflect that records previously completed on forms and typed pages and placed in a manual filing system and manual system control cards are now stored on paper and electronic storage media and maintained in a secure access control location.

10. *Records Retrieval*: This Notice updates and expands on how records are retrieved in the system. The previous SORN identified one method of retrieval of records. This Notice updates and expands the policies and practices for the retrieval of records to include retrievability by date of birth, Social Security Number (SSN), home address, and additional data elements that will assist in the background clearance of individuals.

11. *Retention and Disposal*: This Notice updates the retention and disposal policy to include the specific National Archives and Records

Administration (NARA) records retention and disposition schedule for all the records maintained in the system.

12. *Administrative, Technical, and Physical Safeguards*: This Notice is updated and expanded to ensure the public records in this system are protected in accordance with DOT and the National Institutes of Standards and Technology (NIST) applicable rules, policies and federal regulations.

The following non-substantive changes have been made to the Notice:

13. *Records Access*: This Notice updates the record access procedures to reflect the requirement for signed requests for records to be notarized or accompanied by a statement made under penalty of perjury in compliance with 28 U.S.C. 1746. The address to request access has also been updated to make certain the public's requests are sent to the appropriate address.

14. *Contesting Records and Notification Procedures*: This Notice is updated to direct individuals requesting a copy of their records who they should contact.

Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a system of records. A "system of records" is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a SORN identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

DOT/OST 035—Personnel Security Enterprise System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, Office of Security, 1200 New Jersey Ave SE, Suite W12-180, Washington, DC 20590.

SYSTEM MANAGER(S):

Principal, Office of Security, M-40 1200 New Jersey Ave SE, Suite W12-180, Washington DC 20590

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 322; E.O. 12829; E.O. 12968, E.O. 13467; E.O. 13764; E.O. 9397, (SSN) as amended by E.O. 13478; Security Executive Agent Directive 3; Security Executive Agent Directive 6; Security Executive Agent Directive 7; Homeland Security Presidential Directive 12; and DoD 5220.22-M, National Industrial Security Program Operating Manual.

PURPOSE(S) OF THE SYSTEM:

The system is used to track and manage the information and records necessary to conduct employee suitability background investigations and determine eligibility for clearances. The system captures data related to all aspects of pre-appointments, suitability and fitness determinations, security clearance processing, briefings, foreign travel, foreign contacts, procurement processes for classified contracts. It is also used to maintain documentation for DOT employees who attend classified briefings outside of DOT, and non-DOT individuals attending classified meetings at DOT. Additionally, the system allows the Department to collect metrics and report on operational performance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public, citizens and legal permanent residents, visitors to DOT for official business, current and former federal employees, detailees to DOT from other federal agencies, and members of the DOT contract workforce.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, Social Security Number (SSN), home address, home phone number, personal data on investigative and employment provided by the individual. Reports of investigations, records of security and suitability determinations, records of access authorizations granted, documentation of security briefings/debriefings received, individual notifications of foreign travel for business or personal, records of security violations are also included.

Records of personnel security processing, personal data on investigative and employment forms completed by the individual.

Documented events of any classified national security violations.

RECORD SOURCE CATEGORIES:

Information provided by the subject of the DOT form, electronic background investigative request form and other related documents. Investigative sources contacted in personnel security investigations, baseline investigation for the issuance of Personal Identification Verification card (PIV card) and similar investigations for public trust and national security clearance eligibility; digital investigative reports reviewed at other Government agencies; personal history statements, employment applications and other data provided by the individual and/or other agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or portion of the records or information contained in this system may be disclosed outside of DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System Specific Routine Use:

1. To the Department of Defense and other federal government agencies responsible for conducting background investigations, continuous evaluation, and continuous vetting in order to provide DOT with information relevant to their inquiries and investigations to evaluate, or make a determination regarding qualifications, suitability, or fitness for government employment to physically access federally-controlled facilities or information systems; eligibility for access to classified information or to hold a sensitive position; qualification or fitness to perform work for or on behalf of the government under contract, grant, or other agreement; or access to restricted areas.

Departmental Routine Uses:

2. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

3. A record from this system of records may be disclosed, as a routine

use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

4. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when: (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof, in his/her official capacity, or (c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when: (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or

has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

6. The information contained in this system of records will be disclosed to the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

7. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials, which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(a)(9).

8. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

9. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs

to the Office of Management and Budget, OMB, Congress and the public, published by the Director, OMB, dated September 20, 1989.

10. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

11. DOT may disclose records from this system, as a routine use to appropriate agencies, entities and persons when (a) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or another agency or entity) that rely upon the, compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

12. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between Freedom of Information Act requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

13. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

14. DOT may disclose records to another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

15. DOT may disclose records from this system, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1), of the Privacy Act.

16. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, "Information Sharing Environment, November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004, (Pub. L. 108-458) and Executive Order, 13388 (October 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper and electronic storage media in accordance with the safeguards below.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name, date of birth, SSN, home address, home phone number, or other personal data elements on individuals who are subject of the investigation.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in the system are maintained in accordance with the following NARA records retention and schedules:

GRS 5.6—Item 120: Personal identification credentials and cards—Application and activation record: Destroy 6 years after the end of an employee or contractor's tenure (DAA-GRS-2021-0001-0005).

GRS 5.6—Item 130: Temporary and local facility identification and card access records: Destroy upon immediate collection once the temporary credential or card is returned for potential reissuance due to nearing expiration or not to exceed 6 months from time of issuance or when individual no longer requires access, whichever is sooner (DAA-GRS-2021-0001-0006).

GRS 5.6—Item 170: Personnel suitability and eligibility investigative reports: Temporary. Destroy in accordance with the investigating agency instruction (DAA-GRS-2017-0006-0022).

GRS 5.6—Item 180: Personnel security and access clearance records. Records of people not issued clearances. Includes case files of applicants not hired: Destroy 1 year after consideration of the candidate ends, but longer retention is authorized if required for business use (DAA-GRS-2017-0006-0024).

GRS 5.6—Item 181: Records of people issued clearances: Temporary. Destroy 5 years after employee or contractor relationship ends, but longer retention is authorized if required for business use (DAA-GRS-2017-0006-0025).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative safeguards: Access to data is role based and limited to those that have a need to know for the performance of their official duty. Personnel and contract support are required to attend and complete security and privacy awareness training. Controls are implemented to minimize the risk of information being compromised. Data in the system is protected in accordance with applicable rules and policies including all applicable Department automated systems security and access policies. All users must sign a non-disclosure agreement before granted role in system. Technical safeguards: An auditing function tracks all user activities in relation to data including access and modification. Controls include firewalls, intrusion detection, only role-based access and "need-to-know" specific to performance of their duties, can access control lists and other security methods. Physical Safeguards: Records are stored in an access-controlled office. Access is limited to authorized staff and visitors are only allowed escorted access if there

is a specific need for them to be in the space.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of whether this system of records contains information about them may contact the System Manager at the address provided in the section "System Manager." Information compiled solely for the purpose of determining suitability, contractor fitness, eligibility, or qualification for Federal civilian employment or access to classified information may be exempted from the access provisions pursuant to 5 U.S.C. 552a(k)(5).

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. Department policy requires the inquiry to include the name of the individual, mailing address, phone number or email address, a description of the records sought, and if possible, the location of the records. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

CONTESTING RECORD PROCEDURES:

See "Records Access Procedures" above.

NOTIFICATION PROCEDURES:

See "Records Access Procedures" above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Information compiled solely for the purpose of determining suitability, eligibility, or qualification for federal civilian employment or access to classified information may be exempted from the access provisions pursuant to 5 U.S.C. 552a(k)(1) and/or (5). See 80 FR 32039.

HISTORY:

A full notice of this system of records, DOT/OST 035—DOT OST 035—Personnel Security Enterprise System, was published in the *Federal Register* on April 11, 2000 (65 FR 19553).

Issued in Washington, DC.

Karyn Gorman,

Departmental Chief Privacy Officer.

[FR Doc. 2024-13825 Filed 6-24-24; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley T. Smith, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On June 20, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. ARZATE GOMEZ, Kevin, Mexico; DOB 23 Jun 1992; POB Guerrero, Mexico; nationality Mexico; Gender Male; C.U.R.P. AAGK920623MGRMV09 (Mexico) (individual) [ILLICIT-DRUGS-EO14059]. Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. CAMACHO GOICOCHEA, Euclides (a.k.a. "Quilles"), Mexico; DOB 08 Aug 1972;

POB Guerrero, Mexico; nationality Mexico; citizen Mexico; Gender Male; C.U.R.P. CAGE720808HGRMCC04 (Mexico) (individual) [ILLICIT-DRUGS-EO14059]. Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. MALDONADO BUSTOS, Rodolfo, Mexico; DOB 26 Jan 1965; POB Guerrero, Mexico; nationality Mexico; Gender Male; C.U.R.P. MABR650126HGRLSD08 (Mexico) (individual) [ILLICIT-DRUGS-EO14059]. Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. DURAN ALVAREZ, David, Mexico; DOB 10 Mar 1984; POB Queretaro, Mexico; nationality Mexico; Gender Male; C.U.R.P. DUAD840310HQTRLV02 (Mexico) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: LA NUEVA FAMILIA MICHOACANA).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, LA NUEVA FAMILIA MICHOACANA, a person sanctioned pursuant to E.O. 14059.

5. LOPEZ HERNANDEZ, Josue (a.k.a. "El Colima"), Mexico; DOB 20 Dec 1976; POB Guerrero, Mexico; nationality Mexico; Gender Male; C.U.R.P. LOHJ761220HGR PRS05 (Mexico) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: LA NUEVA FAMILIA MICHOACANA). Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, LA NUEVA FAMILIA MICHOACANA, a person sanctioned pursuant to E.O. 14059.

6. OCHOA LAGUNES, Lucio (a.k.a. "El Borrego"), Mexico; DOB 15 Dec 1975; POB Veracruz, Mexico; nationality Mexico; Gender Male; C.U.R.P. OOLL751215H VZCGC06 (Mexico) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: LA NUEVA FAMILIA MICHOACANA). Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, LA NUEVA FAMILIA MICHOACANA, a person sanctioned pursuant to E.O. 14059.

7. RAMIREZ CARRERA, Josue, Mexico; DOB 20 Sep 1979; POB Mexico City, Mexico; nationality Mexico; Gender Male; C.U.R.P. RACJ790920HDFMRS09 (Mexico) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: LA NUEVA FAMILIA MICHOACANA). Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, LA NUEVA FAMILIA MICHOACANA, a person sanctioned pursuant to E.O. 14059.

8. TABARES MARTINEZ, Uriel (a.k.a. "El Medico"), Mexico; DOB 16 Apr 1979; POB

Guerrero, Mexico; nationality Mexico; Gender Male; C.U.R.P. TAMU790416HGR BRR03 (Mexico) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: LA NUEVA FAMILIA MICHOACANA).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, LA NUEVA FAMILIA MICHOACANA, a person sanctioned pursuant to E.O. 14059.

Dated: June 20, 2024.

Lisa M. Palluconi,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024-13888 Filed 6-24-24; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council; Meeting

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Notice of meeting.

SUMMARY: The Internal Revenue Service Advisory Council will hold a public meeting.

DATES: The meeting will be held Wednesday, July 17, 2024.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Millikan, Office of National Public Liaison, at 202-317-6564 or send an email to PublicLiaison@irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 5 U.S.C. 10(a)(2) of the Federal Advisory Committee Act, that a public meeting of the Internal Revenue Service Advisory Council (IRSAC) will be held on Wednesday, July 17, 2024, to discuss topics that may be recommended for inclusion in a future report of the Council. The virtual meeting will take place at 3:00 p.m. Eastern Time.

To confirm your attendance, members of the public may contact Anna Millikan at 202-317-6564 or send an email to PublicLiaison@irs.gov. Attendees are encouraged to join at least five minutes before the meeting begins.

Should you wish the IRSAC to consider a written statement germane to the Council's work, please call 202-317-6564 or email PublicLiaison@irs.gov by July 15, 2024.

Dated: June 18, 2024.

John A. Lipold,

Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.

[FR Doc. 2024-13860 Filed 6-24-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0113]

Agency Information Collection Activity: Application for Fee or Roster Personnel Designation

AGENCY: Veteran Benefit Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veteran Benefit 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. 2900-0113."

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202-461-8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Fee or Roster Personnel Designation.

OMB Control Number: 2900-0113
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26-6681 solicits information on the fee personnel applicant's background and experience in the real estate valuation field. A fee appraiser is a qualified person requested by the Secretary to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran (38 CFR 36.4301). The fee

appraiser's estimate of value is reviewed by a VA staff appraiser or lender's staff appraisal reviewer who uses the data to establish the VA reasonable value (38 U.S.C. 3710(b)(4), (5), (6) and 3731(f)(1)), which becomes the maximum loan guaranty amount an eligible veteran can obtain.

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 24571 on April 8, 2024, pages 24571 and 24572.

Affected Public: Individuals or Households.

Estimated Annual Burden: 160 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 319 per year.

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. 2024–13894 Filed 6–24–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0024]

Agency Information Collection Activity under OMB Review: Insurance Deduction Authorization

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 <http://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. 2900–0024.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, (202) 461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Insurance Deduction

Authorization (VA Form 29–888).

OMB Control Number: 2900–0024

<https://www.reginfo.gov/public/do/PRAsearch>.

Type of Review: Extension of a currently approved collection.

Abstract: These forms are used by veterans to authorize the Department of Veterans Affairs (VA) to make deductions from benefit payments to pay premiums, loans and/or liens on his/her insurance contract. The information requested is authorized by law, 38 CFR 8.8.

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 24895–24896 on April 9, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,732.

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. 2024–13915 Filed 6–24–24; 8:45 am]

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements; Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9998]

RIN 1545-BQ62

Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final rule.

SUMMARY: This document sets forth final regulations regarding the increased credit amounts or the increased deduction amount available for taxpayers satisfying prevailing wage and registered apprenticeship (collectively, PWA) requirements established by the Inflation Reduction Act of 2022. These final regulations affect taxpayers intending to satisfy the PWA requirements to be eligible for increased amounts of Federal income tax credits or an increased deduction, including those intending to make elective payment elections for available credit amounts, and those intending to transfer increased credit amounts. These final regulations also affect taxpayers intending to satisfy the prevailing wage requirements to be eligible for increased amounts of those Federal income tax credits that do not have associated apprenticeship requirements. Additionally, these final regulations affect taxpayers who initially fail to satisfy the PWA requirements (or prevailing wage requirements, as applicable) and subsequently comply with the correction and penalty procedures in order to be deemed to satisfy the PWA requirements (or prevailing wage requirements, as applicable). Finally, these final regulations address specific PWA and prevailing wage recordkeeping and reporting requirements.

DATES:

Effective date: These regulations are effective August 26, 2024.

Applicability date: For date of applicability, see §§ 1.30C-3(c), 1.45-6(d), 1.45-7(e), 1.45-8(h), 1.45-12(f), 1.45L-3(c), 1.45Q-6(c), 1.45U-3(c), 1.45V-3(c), 1.45Y-3(c), 1.45Z-3(c), 1.48C-3(b), 1.179D-3(c).

FOR FURTHER INFORMATION CONTACT: The Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background***I. Overview*

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48C, and 179D of the Internal Revenue Code (Code), as enacted or amended by the Inflation Reduction Act of 2022 (IRA), Public Law 117-169, 136 Stat. 1818 (August 16, 2022).

The IRA amended sections 30C, 45, 45L, 45Q, 48, 48C, and 179D to provide increased amounts of credits or an increased deduction, as applicable, for taxpayers who satisfy certain requirements and added sections 45U, 45V, 45Y, 45Z, and 48E to the Code to provide new credits, which also contain provisions for increased credit amounts for taxpayers who satisfy certain requirements. Increased credit amounts are available under sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, and an increased deduction is available under section 179D for taxpayers satisfying certain PWA requirements. Increased credit amounts are available under sections 45L and 45U for taxpayers satisfying certain prevailing wage requirements.¹ The IRA includes correction and penalty provisions available in certain situations for taxpayers that have initially failed to satisfy the PWA requirements and are not otherwise eligible for the increased amount of credit or deduction because they do not qualify for an exception.

Increased amounts of credits or an increased deduction are generally available under sections 30C, 45, 45Q, 45V, 45Y, 48, 48E and 179D with respect to certain facilities, properties, projects, technologies, or equipment if beginning of construction (or beginning of installation for section 179D) of the facility, property, project, technology, or equipment, as applicable, occurs before January 29, 2023 (BOC Exception). Additionally, the increased credit amounts generally are available under sections 45, 45Y, 48, and 48E with respect to certain facilities, projects, and technologies, as applicable, with a maximum net output (or capacity for energy storage technology under section 48E) of less than one megawatt (One Megawatt Exception). Generally, if a taxpayer satisfies the PWA requirements, meets the BOC Exception,

¹ The provisions in sections 45L and 45U relating to increased credit amounts do not contain apprenticeship requirements. For simplicity, where possible, the preamble to these final regulations uses the acronym PWA to refer to the prevailing wage and apprenticeship requirements generally, including the prevailing wage requirements in sections 45L and 45U.

or meets the One Megawatt Exception, the amount of credit or deduction determined is equal to the otherwise determined amount of the underlying credit or deduction multiplied by five.

*II. PWA Provisions**A. In General*

The principal PWA requirements are set forth in section 45(b)(6), (7), and (8). In general, section 45(b)(6) provides the increased credit amount for taxpayers satisfying the PWA requirements or meeting one of the exceptions, section 45(b)(7) provides the prevailing wage requirements (Prevailing Wage Requirements),² and section 45(b)(8) provides the apprenticeship requirements (Apprenticeship Requirements).³

In general, section 45 provides a credit for taxpayers producing electricity from qualified energy resources at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and selling that electricity to unrelated persons during the taxable year. Under section 45(a), the credit is equal to 0.3 cents multiplied by the kilowatt hours of electricity: (i) produced by the taxpayer from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and (ii) sold by the taxpayer to an unrelated person during the taxable year. Under section 45(b)(6), with respect to a qualified facility, if a taxpayer satisfies the PWA requirements, meets the BOC Exception, or meets the One Megawatt Exception, then the amount of the credit determined under section 45(a) is multiplied by five.

B. Prevailing Wage Requirements

Section 45(b)(7)(A) provides that with respect to any qualified facility, “the taxpayer shall ensure that any laborers

² The Prevailing Wage Requirements in sections 30C(g), 45L(g), 45Q(h), 45U(d), 45V(e), 48(a)(10), 48C(e), and 179D(b) are similar to the requirements provided under section 45(b)(7). Sections 30C, 45L, 48C, and 179D, however, do not require the payment of wages at rates not less than the prevailing rates after construction, re-equipping, expansion, establishment, or installation, as applicable, ends. Sections 45Y(g)(9) and 45Z(f)(6)(A) adopt by cross-reference the Prevailing Wage Requirements under section 45(b)(7). Section 48E(d)(3) adopts by cross-reference the Prevailing Wage Requirements under section 48(a)(10). Section 48(a)(10)(C) provides for a special 5-year recapture rule that applies for purposes of the Prevailing Wage Requirements with respect to sections 48 and 48E.

³ Sections 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6), 48E(d)(4), and 179D(b)(5) cross-reference the Apprenticeship Requirements in section 45(b)(8). Sections 45L and 45U do not have Apprenticeship Requirements.

and mechanics employed by the taxpayer or any contractor or subcontractor in—(i) the construction of such facility, and (ii) with respect to any taxable year, for any portion of such taxable year which is within the [10-year period beginning on the date the qualified facility was originally placed in service], the alteration or repair of such facility, shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code [Davis-Bacon Act or DBA].”

The Davis-Bacon Act, enacted in 1931, requires the payment of minimum prevailing wages determined by the Department of Labor (DOL) for laborers and mechanics working on contracts entered into by Federal agencies and the District of Columbia, if such contracts are in excess of \$2,000 and are for the construction, alteration, or repair of public buildings and public works. Section 3142 of the DBA requires that Federal agencies entering into contracts covered by the DBA include the requirements of the DBA in the contract, including the requirement to incorporate the applicable wage determinations that set forth the prevailing wages to be paid to laborers and mechanics. The Copeland Act, 40 U.S.C. 3145, sets forth a requirement that the contractor submit certified weekly payroll records to the contracting Federal agency. Congress has included DBA requirements in other laws, often referred to as the Davis-Bacon Related Acts, under which Federal agencies provide assistance for construction projects through grants, loans, insurance, and other methods. The DOL Wage and Hour Division (WHD) administers the DBA prevailing wage provisions.

C. Correction and Penalty Related to Failure To Satisfy Prevailing Wage Requirements

Under section 45(b)(7)(B) of the Code, a taxpayer who is not eligible for the BOC Exception or the One Megawatt Exception and fails to satisfy the Prevailing Wage Requirements under section 45(b)(7)(A), is deemed to have satisfied those requirements if the taxpayer makes a correction payment to any laborer or mechanic who was paid wages at a rate below the required prevailing rate for any period during any year of the construction, alteration, or repair of the qualified facility and pays a penalty to the Internal Revenue Service (IRS).

Under section 45(b)(7)(B)(i)(I), the amount of the correction payment is the sum of: (i) the difference between the amount of wages paid to the laborer or mechanic during the period and the amount of wages required to be paid to the laborer or mechanic during that period in order to meet the Prevailing Wage Requirements; and (ii) interest on the amount under (i) at the underpayment rate established under section 6621 (determined by substituting six percentage points for three percentage points in section 6621(a)(2)) for the applicable period.

Under section 45(b)(7)(B)(i)(II), the amount of the penalty is \$5,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the prevailing wage rate described in section 45(b)(7)(A) for any period during the year. Deficiency procedures do not apply with respect to the assessment or collection of this penalty pursuant to section 45(b)(7)(B)(ii).

Under section 45(b)(7)(B)(iii), if the IRS determines that the failure to satisfy the Prevailing Wage Requirements is due to “intentional disregard” of those requirements, then the correction payment to the laborer or mechanic is three times the amount that would otherwise be determined under section 45(b)(7)(B)(i)(I), and \$10,000 is substituted for \$5,000 in calculating the penalty under section 45(b)(7)(B)(i)(II).

Section 45(b)(7)(B)(iv) provides that once the IRS makes a final determination that a taxpayer has failed to satisfy the Prevailing Wage Requirements, the taxpayer must make the correction and penalty payments within 180 days after the final determination to be eligible for the increased credit amount. If the taxpayer does not make the required correction and penalty payments, and therefore is not allowed the increased credit amount, no penalty is assessed under section 45(b)(7)(B).

D. Apprenticeship Requirements

Under section 45(b)(8), with respect to the construction of any qualified facility, taxpayers must satisfy the Apprenticeship Requirements. The Apprenticeship Requirements impose rules regarding labor hours, apprentice-to-journeyworker ratios, and participation by qualified apprentices.

1. Labor Hours Requirement

Section 45(b)(8)(A)(i) provides that “[t]axpayers shall ensure that, with respect to construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work

(including such work performed by any contractor or subcontractor) with respect to such facility shall, subject to [section 45(b)(8)(B)], be performed by qualified apprentices” (Labor Hours Requirement). For purposes of the Labor Hours Requirement, section 45(b)(8)(A)(ii) provides that the applicable percentage is: (i) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (ii) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and (iii) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(E)(i) defines “labor hours” as the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor, and excluding any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations). Section 45(b)(8)(E)(ii) defines “qualified apprentice” as “an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B).” Section 3131(e)(3)(B) defines a “registered apprenticeship program” as an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act, 50 Stat. 664, chapter 663, 29 U.S.C. 50 *et seq.*) that meets the standards of subpart A of part 29 and part 30 of title 29 of the Code of Federal Regulations.⁴ The DOL Office of Apprenticeship (OA) administers provisions under the National Apprenticeship Act related to registered apprenticeship programs.

2. Ratio Requirement

Under section 45(b)(8)(B), the Labor Hours Requirement is subject to any applicable requirements for apprentice-to-journeyworker ratios of the DOL or the applicable State apprenticeship agency (Ratio Requirement).

⁴ Effective November 25, 2022, 29 CFR part 29 is no longer divided into subparts A and B because subpart B (Industry Recognized Apprenticeship Programs) was rescinded in a final rule published on September 26, 2022 (87 FR 58269). On January 17, 2024, the DOL released a notice of proposed rulemaking that would once again place apprenticeship standards in subpart A of part 29. See 89 FR 3118.

3. Participation Requirement

Under section 45(b)(8)(C), each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform such work (Participation Requirement).

E. Exceptions to Apprenticeship Requirements

1. In General

Under section 45(b)(8)(D)(i), a taxpayer is not treated as failing to satisfy the Apprenticeship Requirements if: (i) the taxpayer satisfies the requirements described in section 45(b)(8)(D)(ii) (Good Faith Effort Exception), or (ii) in the case of any failure by the taxpayer to satisfy the Labor Hours Requirement under section 45(b)(8)(A) and the Participation Requirement under section 45(b)(8)(C), the taxpayer makes a penalty payment to the IRS (Apprenticeship Cure Provision).

2. Good Faith Effort Exception

Under the Good Faith Effort Exception provided by section 45(b)(8)(D)(ii), a taxpayer is deemed to have satisfied the Apprenticeship Requirements with respect to a qualified facility if the taxpayer has requested qualified apprentices from a registered apprenticeship program, and (i) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (ii) the registered apprenticeship program fails to respond to such request within five business days after the date on which such registered apprenticeship program received such request.

3. Apprenticeship Cure Provision

Under section 45(b)(8)(D)(i)(II), if the Good Faith Effort Exception does not apply, then the taxpayer will not be treated as failing to satisfy the Labor Hours Requirement or the Participation Requirement if the taxpayer makes a penalty payment to the IRS in an amount equal to the product of \$50 multiplied by the total labor hours for which the Labor Hours Requirement or the Participation Requirement was not satisfied with respect to the construction, alteration, or repair work

on the qualified facility. Under section 45(b)(8)(D)(iii), if the IRS determines that the failure was due to intentional disregard of the Labor Hours Requirement or Participation Requirement, then the penalty amount increases to \$500 multiplied by the total labor hours for which the Labor Hours Requirement or Participation Requirement was not satisfied.

III. Other Increased Credit Amount Provisions

A. Beginning of Construction Exception

Under the BOC Exception in section 45(b)(6)(B)(ii), a qualified facility the construction of which began prior to the date that is 60 days after the IRS publishes guidance with respect to the requirements of section 45(b)(7)(A) and (8) is a facility eligible for the increased credit amount in section 45(b)(6). On November 30, 2022, the Department of the Treasury (Treasury Department) and the IRS published Notice 2022–61 in the **Federal Register** (87 FR 73580, *corrected in* 87 FR 75141 (Dec. 7, 2022)), providing guidance with respect to the PWA requirements in section 45(b)(7) and (8), including initial guidance for determining the beginning of construction under section 45 and other credits and the beginning of installation under section 179D. Therefore, if a taxpayer began construction or installation of a facility ⁵ before January 29, 2023, then the taxpayer is eligible for the increased amount of credit or deduction without satisfying the PWA requirements, provided the taxpayer is otherwise eligible for the credit or deduction. Similar exceptions apply under sections 30C, 45Q, 45V, 45Y, 48, 48E, and 179D.

For purposes of determining when construction or installation begins, Notice 2022–61 incorporates by reference the notices issued under sections 45,⁶ 45Q,⁷ and 48⁸ (collectively, IRS Notices). The IRS Notices describe two methods of

establishing that construction of a facility has begun: (i) starting physical work of a significant nature (Physical Work Test), and (ii) paying or incurring five percent or more of the total cost of the facility (Five Percent Safe Harbor).

The IRS Notices provide that for purposes of the Physical Work Test and Five Percent Safe Harbor, taxpayers must demonstrate either continuous construction or continuous efforts (Continuity Requirement) regardless of whether the Physical Work Test or the Five Percent Safe Harbor was used to establish the beginning of construction. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances.

The IRS Notices also provide for a Continuity Safe Harbor under which a taxpayer will be deemed to satisfy the Continuity Requirement provided a qualified facility is placed in service no more than four calendar years after the calendar year during which construction of the qualified facility began for purposes of sections 45 and 48, and no more than six calendar years after the calendar year during which construction of the qualified facility or carbon capture equipment began for purposes of section 45Q. For purposes of the Continuity Safe Harbor, certain offshore projects and projects built on Federal land under sections 45 and 48 satisfy the Continuity Requirement if such a project is placed into service no more than ten calendar years after the calendar year during which construction of the project began.

Until the Treasury Department and the IRS issue further guidance on determining when construction or installation begins, taxpayers may continue to rely on the guidance provided in Notice 2022–61 and the IRS Notices. Specifically, to determine when construction begins for purposes of sections 30C, 45V, 45Y, and 48E, principles similar to those under Notice 2013–29 regarding the Physical Work Test and Five Percent Safe Harbor apply, and taxpayers satisfying either test will be considered to have begun construction. In addition, principles similar to those provided in the IRS Notices regarding the Continuity Requirement for purposes of sections 30C, 45V, 45Y, and 48E apply. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances. Similar principles to those under section 3 of Notice 2016–31 regarding the Continuity Safe Harbor also apply for purposes of sections 30C, 45V, 45Y, and 48E. Taxpayers may rely on the Continuity Safe Harbor with

⁵ Notice 2022–61 defines facility as qualified facility, property, project, or equipment.

⁶ Notice 2013–29, 2013–20 I.R.B. 1085; *clarified by* Notice 2013–60, 2013–44 I.R.B. 431; *clarified and modified by* Notice 2014–46, 2014–36 I.R.B. 520; *updated by* Notice 2015–25, 2015–13 I.R.B. 814; *clarified and modified by* Notice 2016–31, 2016–23 I.R.B. 1025; *updated, clarified, and modified by* Notice 2017–04, 2017–4 I.R.B. 541; *Notice 2018–59, 2018–28 I.R.B. 196; modified by* Notice 2019–43, 2019–31 I.R.B. 487; *modified by* Notice 2020–41, 2020–25 I.R.B. 954; *clarified and modified by* Notice 2021–5, 2021–3 I.R.B. 479; *clarified and modified by* Notice 2021–41, 2021–29 I.R.B. 17.

⁷ Notice 2020–12, 2020–11 I.R.B. 495.

⁸ Notice 2018–59; *modified by* Notice 2019–43; *modified by* Notice 2020–41; *clarified and modified by* Notice 2021–5; *clarified and modified by* Notice 2021–41.

respect to those sections, provided the facility is placed in service no more than four calendar years after the calendar year during which construction began.

For purposes of section 179D, installation of energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan has begun if a taxpayer generally satisfies principles similar to the Physical Work Test and the Five Percent Safe Harbor described in section 2.02 of Notice 2022–61 regarding the beginning of construction under Notice 2013–29. The relevant facts and circumstances will ultimately determine whether a taxpayer has begun installation.

For purposes of sections 45, 45Q, and 48, the IRS Notices will continue to apply under each respective Code section, including application of the Physical Work Test and Five Percent Safe Harbor, and the rules regarding the Continuity Requirement and Continuity Safe Harbors.

B. One Megawatt Exception

Under the One Megawatt Exception in section 45(b)(6)(B)(i), a qualified facility that has a maximum net output of less than one megawatt (as measured in alternating current) is a facility eligible for the increased credit amount. Similar exceptions apply for a qualified facility with a maximum net output of less than one megawatt (as measured in alternating current) under sections 45Y(a)(2)(B)(i) and 48E(a)(2)(A)(ii)(I); an energy project with a maximum net output of less than one megawatt of electrical (as measured in alternating current) or thermal energy under section 48(a)(9)(B)(i); and energy storage technology with a capacity of less than one megawatt under section 48E(a)(2)(B)(ii)(I).

IV. Prior Guidance

On October 24, 2022, the Treasury Department and the IRS published Notice 2022–51, 2022–43 I.R.B. 331, requesting comments on aspects of the increased amounts of credits and deduction enacted or amended by the IRA, including the PWA provisions. On November 30, 2022, the Treasury Department and the IRS published Notice 2022–61. Notice 2022–61 provided guidance on the PWA requirements that generally apply under sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D. Additionally, as discussed in Section III.A. of this Background, Notice 2022–61 established the 60-day period described in sections 30C(g)(1)(C)(i),

45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii), 48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i) for purposes of the BOC Exception. Finally, Notice 2022–61 provided guidance for determining the beginning of construction under sections 30C, 45, 45Q, 45V, 45Y, 48, and 48E, and the beginning of installation under section 179D.

On August 30, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking and a notice of public hearing (REG–100908–23) in the **Federal Register** (88 FR 60018), *corrected in* 88 FR 73807 (Oct. 27, 2023), and 89 FR 25550 (April 11, 2024), providing guidance on the PWA requirements under sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D (Proposed Regulations). The provisions of the Proposed Regulations are explained in greater detail in the preamble to the Proposed Regulations.

On November 22, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking and a notice of public hearing (REG–132569–17) in the *Federal Register* (88 FR 82188), providing guidance under section 48. Among other matters, the proposed regulations under section 48 (Section 48 Proposed Regulations) withdrew and repropoed the regulations in § 1.48–13 regarding the PWA requirements under section 48, the One Megawatt Exception under section 48(a)(9)(B)(i), and the recapture rules under section 48(a)(10)(C) related to the Prevailing Wage Requirements. These final regulations do not include final regulations under section 48. Additionally, because proposed § 1.48E–3 would have incorporated the rules of proposed § 1.48–13 by cross-reference, these final regulations do not include final regulations under section 48E. The Treasury Department and the IRS intend to issue final regulations with respect to the PWA Requirements in proposed § 1.48–13 and proposed § 1.48E–3 in future Treasury decisions.

The Proposed Regulations provided that taxpayers may rely on proposed § 1.48E–3 with respect to construction of a qualified facility on or after January 29, 2023, and on or before the date proposed § 1.48E–3 publishes as a final regulation in the **Federal Register**, provided, that beginning after the date that is 60 days after August 29, 2023, taxpayers follow the proposed regulations in their entirety and in a consistent manner. The Section 48 Proposed Regulations similarly provided that taxpayers may rely on proposed § 1.48–13 with respect to construction of a property or project

beginning on or after January 29, 2023, and on or before the date proposed § 1.48–13 publishes as a final regulation in the **Federal Register**, provided, that beginning after the date that is 60 days after August 29, 2023, taxpayers follow proposed § 1.48–13 in its entirety and in a consistent manner. These final regulations do not change the reliance provided with respect to proposed § 1.48–13 and proposed § 1.48E–3.

Comments received regarding the specific PWA requirements under sections 48 and 48E, the One Megawatt Exception under sections 48 and 48E, and the recapture rules contained in section 48(a)(10)(C), all whether in response to the Proposed Regulations or the Section 48 Proposed Regulations, will be addressed in the future Treasury decision adopting those rules as final regulations. Other comments on the PWA requirements (including comments that referenced section 48 or section 48E, but addressed the PWA requirements more generally) were considered in the drafting of these final regulations and are discussed herein.

On June 3, 2024, the Treasury Department and the IRS published a notice of proposed rulemaking and a notice of public hearing (REG–119283–23) in the **Federal Register** (89 FR 47792), proposing guidance under sections 45Y and 48E (Section 45Y/48E Proposed Regulations). In the Section 45Y/48E Proposed Regulations, the Treasury Department and the IRS requested comments on the proposed definition of a qualified facility with a maximum net output of less than one megawatt (as measured in alternating current) for purposes of the One Megawatt Exception under section 45Y(a)(2)(B)(i). All comments received pertaining to the One Megawatt Exception under section 45Y(a)(2)(B)(i), whether in response to the Proposed Regulations or the Section 45Y/48E Proposed Regulations, will be addressed in future guidance under section 45Y finalizing those rules. General PWA comments that were received in response to the Proposed Regulations and that referenced section 45Y are discussed throughout this Summary of Comments and Explanation of Revisions because they were considered in the drafting of these final regulations.

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions summarizes the Proposed Regulations, all the substantive comments submitted in response to the Proposed Regulations, and revisions adopted by these final regulations. The Treasury Department

and the IRS received 342 written comments in response to the Proposed Regulations. The comments are available for public inspection at <https://www.regulations.gov> or upon request. After full consideration of the comments received, these final regulations adopt the Proposed Regulations with modifications in response to such comments as described in this Summary of Comments and Explanation of Revisions.

Most comments addressed the PWA requirements in general, without identifying a specific Code section. These comments are primarily addressed in Sections I. through VIII. of this Summary of Comments and Explanation of Revisions, and revisions that have been made in response to these comments are also typically described in general terms, or by reference to section 45, which sets forth the principal PWA requirements. Thus, the terms qualified facility and facility as used in Sections I. through VIII. of this Summary of Comments and Explanation of Revisions generally includes qualified equipment, qualified residence, qualified project, and qualified property for purposes of sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48C, and 179D, as applicable. References to an increased credit amount in Sections I. through VIII. of this Summary of Comments and Explanation of Revisions include the increased deduction amount available under section 179D, as applicable. Comments specifically addressing the PWA requirements in sections 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48C, and 179D are described in Section IX. of this Summary of Comments and Explanation of Revisions.

Comments summarizing the statute or the Proposed Regulations, recommending statutory revisions, and addressing issues that are outside the scope of this rulemaking (such as revising other Federal regulations and recommending changes to IRS forms) are generally not addressed in this Summary of Comments and Explanation of Revisions or adopted in these final regulations. Some commenters requested additional time to submit comments. The Proposed Regulations required all comments to be received by October 30, 2023; however, comments received by April 25, 2024, were considered in drafting these final regulations. In addition to addressing the comments received in response to the Proposed Regulations, the final regulations also include non-substantive grammatical or stylistic changes to the Proposed Regulations.

I. Pre-Filing Activities

A. Applicability of the Davis-Bacon Act in General⁹

Under section 45(b)(7)(A), the increased credit amount provided by section 45(b)(6) is available with respect to a qualified facility if, among other requirements, a taxpayer ensures that laborers and mechanics are, “paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with” the DBA. As explained in the preamble to the Proposed Regulations, the phrase “in accordance with” means “in agreement or harmony with; in conformity to; according to.”¹⁰ In interpreting the “in accordance with” language, the preamble to the Proposed Regulations explained that the Treasury Department and the IRS proposed to incorporate those requirements of the DBA that are relevant for the purposes of section 45(b)(7)(A) and the intent of the IRA, and that are necessary for, and consistent with, sound tax administration.

Under the DBA, the DOL determines the wage rates that are “prevailing” for each classification of covered laborers and mechanics in the geographic area in which work is to be performed and publishes general wage determinations providing that information to the public. Under the DBA, Federal contracting agencies follow specified procedures for incorporating DBA requirements and wage determinations into covered contracts. Pursuant to the Copeland Act, contractors are required to submit certified weekly payroll records to the contracting agency. Under the DBA regulations, the contracting agency and the DOL WHD have responsibility to ensure compliance with prevailing wage requirements by engaging in periodic audits or investigations of contracts, including examination of payroll data.

The Proposed Regulations would have largely adopted DBA guidance relating to applicable wage rates and wage determinations and the meaning of pertinent terms such as “laborer” and “mechanic”; “construction, alteration,

or repair”; “wages”; and “employed.” The Proposed Regulations would not have incorporated the DBA (or Copeland Act) guidance regarding provisions required to be included in contracts, those provisions related to the reporting of certified weekly payroll records by contractors to contracting agencies, and the various enforcement processes that are available to the DOL and the contracting agencies to address DBA noncompliance.

As explained in the preamble to the Proposed Regulations, this approach was intended to reflect the substantive differences between the DBA and the Code. Under the DBA, a contractor is required to pay prevailing wages as a condition of a Federal contract award. Under section 45, although the requirement to ensure the payment of wages at rates not less than the prevailing rates is generally triggered when construction of a facility begins, that requirement becomes legally binding only if a tax return claiming the increased credit amount is filed. The Code does not require taxpayers who do not seek an increased credit amount under section 45(b)(6) to ensure the payment of prevailing wages at the beginning of construction, alteration, or repair of a facility. Furthermore, under the correction and penalty provisions in section 45(b)(7)(B)(i)(I) and 45(b)(7)(B)(i)(II), taxpayers may remedy prior failures to pay wages at rates not less than the prevailing rates, even after a return is filed, and still be eligible for the increased credit amount. In addition, a taxpayer that satisfies the BOC Exception or the One Megawatt Exception, if applicable, may generally claim the increased credit amount regardless of whether laborers and mechanics were paid prevailing wages.

Several commenters suggested that the final regulations should incorporate additional requirements from the DBA, instead of limiting the incorporation to those that the Treasury Department and the IRS determine are relevant for purposes of claiming the increased credit amount and that are necessary for, and consistent with, sound tax administration. Some commenters asserted that not incorporating all elements of the DBA framework was arbitrary and capricious and contrary to the statute. Some commenters alleged that the Proposed Regulations failed to adequately address the increased chance of improperly claimed credits by relying too heavily on post-filing enforcement. One commenter stated that post-filing enforcement by the IRS does not guarantee workers’ rights, including notice of entitlement to the prevailing wage, a complaint procedure to report

⁹ All references to the DBA regulations throughout this Summary of Comments and Explanation of Revisions include updates to the DBA regulations published in a final rule on August 23, 2023 (88 FR 57526).

¹⁰ *In accordance with*, Oxford English Dictionary, <https://www.oed.com/search/dictionary/?scope=Entries&q=in+accordance+with> (last visited Aug. 8, 2023); see *Accordance*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2006) (meaning agreement, conformity).

noncompliance, protections against retaliation, or a requirement that workers be guaranteed any wage by an enforceable contract. The commenters also stated that the reliance on post-filing compliance was inconsistent with the DBA and would lead to fraud, noncompliance, and evasion of the tax rules. At least one commenter suggested that incorporating all of the DBA requirements is necessary to more generally address issues of fraud in the construction industry. One commenter opined that although the IRA differed from traditional Davis-Bacon Related Acts that expressly adopt the DOL's existing implementation framework and confer primary enforcement authority upon the DOL, this was because the IRA was enacted through reconciliation. The commenter stated that this should not impact the implementation of the prevailing wage provisions.

Although several commenters supported a more expansive incorporation of the DBA, many other commenters stated that the Proposed Regulations took the correct approach regarding incorporation of the DBA. One commenter suggested that given the unique challenges of applying a system arising in Federal contracting to the IRA's tax credit regime, Congress did not limit the Treasury Department and the IRS to adopting the DBA requirements and enforcement scheme word-for-word and without modification. Many commenters acknowledged the need for the Treasury Department and the IRS to take a reasonable approach to interpret a Code provision that references a Federal law applicable to Federal contracts.

These final regulations do not alter the general approach taken in the Proposed Regulations of incorporating DBA guidance for purposes of the PWA requirements only if it is relevant for the purposes of section 45(b)(7)(A) and the intent of the IRA, and necessary for, and consistent with, sound tax administration. The Treasury Department and the IRS recognize the importance of ensuring compliance with the statute such that workers benefit from the payment of prevailing wages on projects for which the increased amount of credit is claimed and find that the general approach in the Proposed Regulations promotes that goal within the constraints of the statute and in furtherance of sound tax administration. Consistent with this framework, the final regulations encourage taxpayers to adopt certain practices for ensuring compliance in the interest of fulfilling statutory intent and furthering sound tax administration.

The Treasury Department and the IRS disagree with the assertion that the Proposed Regulations were arbitrary and capricious. This Summary of Comments and Explanation of Revisions reiterates and expands upon the rationale for applying the DBA provisions that are relevant for purposes of claiming the increased tax credit and consistent with sound tax administration. If Congress intended for the same DBA requirements to apply under the IRA, it would have so provided. The Treasury Department and the IRS are required to implement statutory language as enacted, regardless of the procedure under which the legislation was passed (for example, reconciliation). As enacted, the statute does not indicate that the regulations setting forth the PWA requirements must mirror the DBA in every instance. As noted in the preamble to the Proposed Regulations, "in accordance with" means "in agreement or harmony with; in conformity to; according to." This does not require exact duplication or incorporation. The differences in statutory language and context reflect the very significant differences between the administration of the wage provisions of Federal contracts and the administration of the tax system, and the statute provides flexibility for the IRS to incorporate the requirements from the DBA that are appropriate for tax administration purposes.

The IRS's authority to determine a taxpayer's compliance with the PWA requirements generally arises after the taxpayer files a claim for the increased tax credit. Because taxpayers may choose not to claim the increased credit amount, the IRS cannot determine a taxpayer's compliance or engage in enforcement activities before the taxpayer files a tax return claiming the increased credit amount. Imposing pre-filing requirements through regulations would not be a reasonable interpretation of the statutory language and would not permit the IRS to enforce the PWA requirements in advance of filing. Many of the DBA requirements (for example, certified weekly payroll, public notice of wage classifications and wage rates, required contract provisions) are either statutorily required under the DBA (or a related act) or designed to apply to all Federal construction contracts with certainty at the time of contract award (that is, in advance of work being performed). Those same pre-filing requirements are not prescribed in the Code.

As acknowledged by many commenters, the Treasury Department and the IRS need to take a reasonable approach to interpret a Code provision

that references a Federal law applicable to Federal contracts (a system that applies with certainty in the case of a Federal contracting agency that solicits bids for a contract) in the context of Federal taxes (a system designed to function with a compliance and enforcement framework that follows only after the filing of tax returns).

Many commenters recognized that the PWA requirements are not binding until the tax return claiming the credit is filed, yet they still requested that the IRS impose several additional reporting, notice, and other requirements in advance of filing for the credit. As the requirement to pay prevailing wages does not become binding until a taxpayer files a claim for the increased amount of credit, and the IRS has a well-established record of effective post-filing enforcement, the final regulations do not adopt these requests. The Treasury Department and the IRS have also determined that imposing additional pre-filing requirements on taxpayers could discourage taxpayers from seeking the increased amount of credit available under the IRA, resulting in fewer workers receiving prevailing wages. The Treasury Department and the IRS will not impose pre-filing requirements that unnecessarily raise compliance costs, especially for small businesses, and provide no meaningful benefit to the IRS in administering the tax system.

In reviewing the public comments, the Treasury Department and the IRS have decided to adopt key aspects of the Proposed Regulations and have also determined that certain changes to the Proposed Regulations would be appropriate to support compliance with the PWA requirements, and to encourage taxpayers to adopt certain practices. The Treasury Department and the IRS have made these determinations after consultation with the DOL WHD and OA. Those changes are discussed throughout this Summary of Comments and Explanation of Revisions. Accordingly, as discussed in Section VII.D.3. of this Summary of Comments and Explanation of Revisions, in cases in which it is necessary for and consistent with sound tax administration, these final regulations expand on the factors demonstrating intentional disregard to reflect the value of these practices. These additional factors incorporate the spirit and rationale of commenters' suggestions by addressing whether a taxpayer has (among other actions): (i) conducted regular reviews of the applicable prevailing wage rate that must be paid to laborers and mechanics and the appropriate classification of such

laborers and mechanics based on actual job duties; (ii) investigated complaints of retaliation or adverse action resulting from reports of suspected failures to pay prevailing wages and/or classify workers in accordance with applicable wage determinations, and taken appropriate actions to remedy any retaliation or adverse action and prevent it from reoccurring; and (iii) provided laborers and mechanics with paystubs (or access to individual payroll records) reflecting the amount being paid per pay period (including the specific hourly rate and all deductions from wages).

B. Specific Pre-Filing Activities Required Under the DBA

Some commenters requested that the final regulations incorporate certain pre-filing requirements in line with DBA requirements, to prevent fraud and ensure that workers are paid wages at rates not less than the prevailing rates to which they are entitled. Specifically, commenters recommended that the final regulations require: (i) the submission of certified weekly or monthly payroll records or other compliance reports and the government's regular review and verification of those submitted records through job site visits and interviews with workers, and (ii) that taxpayers, contractors, and subcontractors include DBA provisions in contracts and post applicable wage rates on job sites in prominent and accessible locations.

1. Certified Payroll Records, Other Compliance Reporting, and Government Review of This Reporting

Some commenters suggested that requiring the submission of weekly or monthly certified payroll records to the IRS or the DOL would allow the IRS to monitor compliance with the PWA requirements. Other commenters similarly suggested that the final regulations require the submission of sworn monthly compliance reports to the IRS to allow for effective monitoring of compliance with the statute prior to filing. One commenter suggested that the IRS should regularly review the certified payroll records submitted by contractors and subcontractors, conduct job site visits, and interview workers to ensure that the information reported in the certified payroll records is accurate, and provides taxpayers with an opportunity to correct any failures in advance of filing. This commenter acknowledged that the IRS would not be able to withhold funds or assess penalties in connection with any pre-filing review, because the requirement to pay prevailing wages is not binding until the taxpayer files a tax return claiming the increased credit amount.

One commenter stated that a requirement to regularly certify payroll will deter bad actors and preclude falsified payroll records.

Several commenters supported the approach in the Proposed Regulations to not require the regular submission of payroll records. One commenter stated that the submission of weekly certified payroll records would not assist the IRS with efficient administration of the increased credit amount provisions. Additionally, several other commenters stated that the requirement to submit certified weekly payroll records would be burdensome on taxpayers. Finally, one commenter agreed that submission of certified weekly payroll to the IRS would not be in furtherance of sound tax administration, but the commenter requested that contractors and subcontractors be required to submit certified weekly payroll to taxpayers. The commenter asserted that this could be a good way for taxpayers to monitor the activities of contractors and subcontractors.

Applying the principle outlined in Section I.A. of this Summary of Comments and Explanation of Revisions to incorporate only the DBA requirements that are relevant for claiming the increased credit amount and consistent with sound tax administration, the comments requesting that the final regulations require the submission of pre-filing certified payroll records or other sworn reports, the pre-filing review of submitted payroll records, job site visits by the IRS, and interviews of workers regarding the accuracy of submitted information are not adopted. While these comments are not adopted, in the context of an examination, the IRS routinely engages in activities such as review of payroll records, site visits, and taxpayer interviews.

The comments requesting that the final regulations require the submission of pre-filing payroll information or sworn compliance reports appear to assert that the IRS would be able to easily discern noncompliance on the face of payroll records or other sworn reports submitted in advance of a taxpayer filing any claim for a related tax credit. To the contrary, the requirement to pay prevailing wages becomes binding only if a tax return claiming the increased credit amount is filed. Payroll records or other sworn reports relating to the payment of wages before a return claiming the actual increased credit amount is filed would provide minimal benefit to the IRS's enforcement actions, and would impose considerable administrative work on taxpayers, including those who may not

eventually claim the increased credit amount. Many commenters acknowledge that this information would not be used until the increased credit amount is claimed. The Treasury Department and the IRS decline to impose these additional administrative tasks on taxpayers because the information would provide minimal benefit to the IRS in advance of a taxpayer filing a return claiming the credit.

However, the Treasury Department and the IRS agree that there may be advantages in taxpayers obtaining regular payroll records from contractors and subcontractors. Accordingly, these final regulations add as a factor for intentional disregard whether a taxpayer (or a third party acting on behalf of the taxpayer) has regularly reviewed payroll information of its contractors and subcontractors or has required its contractors or subcontractors to regularly provide payroll information to the taxpayer (or a third party acting on behalf of the taxpayer). Furthermore, as discussed in Section X.A. of this Summary of Comments and Explanation of Revisions, these final regulations adopt and expand upon the recordkeeping requirements in the Proposed Regulations and clarify that the DOL Form WH-347 may be used to satisfy some of the recordkeeping requirements.

2. Mandatory Incorporation of DBA Contract Requirements and Posting of Applicable Prevailing Wage Determinations

The Proposed Regulations would have encouraged certain behaviors that are very similar to those required of contractors under the DBA as factors considered for intentional disregard. These behaviors, which the Treasury Department and the IRS view as indicative of an intent to comply with the Prevailing Wage Requirements, would have included incorporating provisions in any contracts entered with contractors that require payment by the contractors and any subcontractors of wages at rates not less than the prevailing rates and posting the applicable prevailing wage rates in a prominent place for the duration of the construction, alteration, or repair of the facility or otherwise notifying employees of the applicable prevailing wage rates.

Some commenters suggested that taxpayers should be required to include certain contract provisions required by section 3142(c) of the DBA in their contracts with contractors and subcontractors. Some commenters recommended the final regulations

mandate specific contract terms, including the taxpayer's intent to claim the credit, the expected wage classifications of laborers and mechanics who will work on the project, estimates of apprenticeship hours, and flow-down responsibility clauses requiring compliance with the PWA requirements by all contractors and subcontractors. Additionally, commenters suggested that all solicitations, contracts, and subcontracts include clauses committing to the proper hiring and involvement of qualified apprentices under the Apprenticeship Requirements.

Commenters also recommended that the final regulations adopt the requirement in section 3142(c)(2) of the DBA that prevailing wage rates must be posted by employers on the job site in a prominent and accessible location where they can be easily seen by workers. The Proposed Regulations would have included as a factor to be considered in the determination of whether a failure to satisfy the Prevailing Wage Requirements was due to intentional disregard, whether the taxpayer posted in a prominent place at the facility or otherwise provided written notice to laborers and mechanics during the construction, alteration, or repair of the facility, of the applicable wage rate(s) as determined by the DOL for all classifications of work to be performed for the construction, alteration, or repair of the facility, and that in order to be eligible to claim certain tax benefits, employers must ensure that laborers and mechanics are paid wages at rates not less than such wage rates. Although commenters were supportive of this factor, some commenters were critical of the fact that the information proposed for the notice leaves open the question of whether the worker is actually entitled to prevailing wages because the worker may not know whether an increased credit amount is being claimed with respect to the work they are performing. One commenter further requested that the poster include language regarding the right to be properly classified as an employee, the right to be free from retaliation related to immigration status, and information regarding how to contact the IRS. One commenter suggested requiring each contractor and subcontractor employing workers on projects for which an increased credit amount could be claimed to provide each worker with an individualized written notice identifying their respective classification and the prevailing wage rate to which they are entitled. The commenter suggested

requiring notice to be made no later than when construction, alteration, or repair begins, and delivering the suggested notice along with workers' paychecks.

Although both contract language and the posting of the applicable prevailing wage rates is required by the DBA, no similar provision exists in section 45(b)(7) of the Code that would require taxpayers to include specific terms in a contract or post prevailing wage rates during construction. Applying the principle outlined in Section I.A. of this Summary of Comments and Explanation of Revisions to incorporate only the DBA requirements that are relevant for claiming the increased credit amount and consistent with sound tax administration, the Treasury Department and the IRS have decided not to require specific DBA or other PWA-related provisions in private commercial contracts. These agreements are executed well before a tax return claiming the credit is filed. Similarly, the final regulations do not require the posting of applicable wage rates, because a taxpayer may decide to claim the increased credit amount after construction has started. Requests regarding the posting of information related to general rights of workers under State labor laws or other Federal laws are outside the scope of these final regulations. For these reasons, the comments requesting that the final regulations require the incorporation of DBA-contract provisions and the posting of applicable prevailing wage rates are not adopted.

However, there is likely a benefit to taxpayers seeking to comply with the PWA requirements if the requirement to pay prevailing wages and hire qualified apprentices is incorporated in the terms of any contract with respect to the construction, alteration, or repair of a facility, including lower-tier agreements between contractors and subcontractors, and if the laborers and mechanics who are employed in the construction of a facility are informed of the applicable prevailing wage rates that would be required if the taxpayer claims the increased credit amount. The Proposed Regulations would have encouraged this behavior from taxpayers who know they are going to claim the increased credit amount, and the final regulations incorporate and expand upon the list of factors that may be considered by the IRS for purposes of determining if a failure to satisfy the PWA requirements was due to intentional disregard.

C. Including Other Conditions as a Prerequisite for Claiming the Increased Amount of Credit

Some commenters suggested that the final regulations should require taxpayers to provide advance notice to the IRS, the DOL, potential employees, and the general public of their intent to claim the increased credit amount by satisfying the PWA requirements to provide clarity to workers. Specifically, one commenter suggested requiring taxpayers to file a statement of intent to claim the increased credit amount with the DOL WHD, which would then be available for public review to enable interested parties to monitor projects that may be subject to the PWA requirements. Another commenter recommended requiring taxpayers to provide notice to workers, before the start of any project for which an increased credit amount could be claimed, of their intention to claim the increased credit amount by satisfying the PWA requirements.

Consistent with the principles outlined in Section I.A. of this Summary of Comments and Explanation of Revisions, the final regulations do not adopt these suggestions. Requiring taxpayers to declare an intent to claim an increased credit amount would provide no meaningful benefit for the IRS's administration of the PWA requirements, and would impose additional pre-filing requirements on taxpayers. Section 45(b)(6) does not require taxpayers to declare an intent to claim the increased credit amount. However, as noted previously, posting or otherwise providing general information about applicable wage rates is a good practice for taxpayers to incorporate if the taxpayer is planning to claim the increased credit amount. The final regulations retain these practices as a factor that may be considered by the IRS for purposes of determining if a failure to satisfy the Prevailing Wage Requirements was due to intentional disregard.

Commenters also asked that the final regulations require a pre-filing registration or reporting system, similar to that provided for under sections 6417 and 6418, applicable to taxpayers intending to claim the increased credit amount for satisfying the PWA requirements. Commenters alleged that since many of the credits covered by sections 6417 and 6418 also contain PWA requirements, the language in sections 6417 and 6418 requiring information or registration can be applied to require pre-filing registration of the intent to claim the increased credit amount.

Section 6418(g)(1) provides that as a “condition of, and prior to, any transfer of any portion of an eligible credit” under section 6418, the Secretary of the Treasury or her delegate (Secretary) “may require such information (including, in such form or manner as is determined appropriate by the Secretary, such information returns) or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments.” Section 6417(d)(5) provides the Secretary with similar discretion to implement a registration requirement. The authority to implement a pre-filing registration requirement provided in sections 6417 and 6418 is statutorily created and intended to address different underlying circumstances. Sections 6417(d)(5) and 6418(g) address the use of a registration system as a condition of and prior to certain events, specifically, prior to the amounts being treated as payments made by applicable entities or prior to transferring a credit.

There is no analogous statutory language in section 45 or elsewhere in the Code related to the PWA requirements. Moreover, the registration requirements for sections 6417 and 6418 serve the specific purposes of preventing duplication, fraud, improper payments, or excessive payments. Those concerns are largely unique to the elective pay and credit transfer opportunities created by sections 6417 and 6418. In the context of sections 6417 and 6418, the IRS implemented the registration portal to prevent fraud and duplicate or improper payments, by providing the IRS with basic information that will facilitate processing and improve the administration of the credits. A pre-filing registration or reporting mechanism in the PWA context would not provide the IRS with actionable information for purposes of enforcing the PWA requirements. For these reasons, the comments requesting that the IRS establish a PWA registration system similar to that used for sections 6417 and 6418 are not adopted.

D. Other Comments Regarding Pre-Filing Activities and IRS Enforcement Procedures

1. Organizational Changes to the IRS and General Tax Administration

Several commenters suggested that the final regulations implement organizational changes to the IRS. For example, one commenter recommended that the regulations create a dedicated office of labor standards enforcement to enforce the PWA provisions. An

additional commenter requested that the Treasury Department establish a dedicated compliance and enforcement office. The commenter also encouraged the Treasury Department to review State requirements for disclosures, proof of payment, and affirmation, and adopt models that best effectuate compliance. One commenter suggested that the Treasury Department and the IRS create an inter-agency office with the DOL to facilitate the receipt of contemporaneous reporting from taxpayers.

Another commenter suggested the creation of a digital platform to be used by taxpayers to submit PWA documentation that would be accessible by businesses, the DOL, and local apprenticeship programs. Several commenters recommended that the Treasury Department and the IRS partner with the DOL and applicable State agencies in the enforcement of PWA requirements. Additional commenters requested that the Treasury Department and the IRS establish formal partnerships with fair contracting organizations, labor unions, and other workers’ rights organizations in order to expand the capacity to monitor jobsites. A commenter stated that such third-party partnerships—known as Joint Labor Compliance Monitoring Programs—have been successfully implemented across the country as a method of improving working conditions for workers and ensuring that projects are completed responsibly and on time.

A few commenters suggested the final regulations prescribe specific actions regarding IRS enforcement, compliance, and general tax administration. For example, one commenter recommended that any IRS audit of increased credit amounts verify and cross-reference State labor materials to ensure prevailing wage and apprenticeship standards are met. A commenter stated that States such as California, Washington, and Wyoming have implemented State level apprenticeship utilization provisions and that the States have developed user friendly systems for contractors to report apprentice and journeyworker hours. At least one commenter also requested that the Treasury Department ensure that audit processes and other enforcement mechanisms are done in a transparent, accessible manner and with close engagement with other agencies. Several commenters provided recommendations regarding information that should be reported on IRS forms claiming the increased credit amount. A commenter suggested that the IRS implement a cross-withholding mechanism, modeled after that used by

the DOL under the DBA, whereby a taxpayer engaged in two or more separate projects who is found to violate the PWA requirements on one project is then denied the increased credit amount with respect to any additional projects.

Comments regarding the IRS’s organizational structure, coordination with other agencies and States, how the IRS conducts audits, and changes to IRS forms are outside the scope of these final regulations. Therefore, the changes suggested by the comments are not adopted. In developing the Proposed Regulations and these final regulations, the Treasury Department and the IRS consulted extensively with the DOL and will continue to consult with the DOL as appropriate to assist in the administration of the PWA requirements.

2. Requests for Private Letter Rulings

One commenter recommended that the IRS permit taxpayers to submit requests for Private Letter Rulings (PLRs) regarding compliance with the PWA requirements. Whenever appropriate in the interest of sound tax administration, it is the policy of the IRS to answer inquiries of individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions, prior to the filing of returns or reports that are required by the revenue laws. Revenue Procedure 2024–1, 2024–01 I.R.B. 1, is updated each year and contains the general procedures for requests for PLRs. There are, however, certain areas in which the IRS will not issue rulings or determination letters, including areas in which the IRS is temporarily not issuing rulings or determination letters because those matters are under study. These no-rule issues are set forth in Revenue Procedure 2024–3, 2024–01 I.R.B. 143, which is also updated annually. Issues pertaining to the application of the IRA currently are identified in Revenue Procedure 2024–3 as matters under study by the IRS and thus are not currently subject to PLRs, but this position is subject to change. Updates to the no-rule issues are outside the scope of these final regulations.

3. Complaint Procedures for Underpayment of Applicable Prevailing Wage Rates and the Failure To Hire Qualified Apprentices

The Proposed Regulations would have included whether the taxpayer had in place procedures whereby laborers and mechanics could report suspected failures to pay prevailing wages and/or suspected failures to classify workers correctly in accordance with the applicable wage determination to

appropriate personnel departments or managers without retaliation or other adverse action as a factor to be considered in the determination of intentional disregard.

Many commenters requested that the final regulations prescribe the process through which a worker can complain about being underpaid. Commenters suggested that the process for complaints should be available to all interested parties, and that any person should be able to submit complaints to the government, preferably through the IRS website, without fear of retaliation by their employers or others. A commenter urged the IRS to develop and inform stakeholders and the public on complaint and enforcement procedures and provide contact information for the IRS office that will accept and investigate complaints. Another commenter recommended that the Treasury Department and the IRS create a complaint mechanism with both a telephone hotline and an online portal, and available in English and Spanish, to file complaints.

Commenters acknowledged that unlike under the DBA, if the Treasury Department and the IRS are informed of violations or irregularities before the increased credit is claimed, the agencies would not be able to immediately assess fines or mandate that taxpayers issue corrective payments. A commenter acknowledged that there are limitations on the IRS's remedial authority, but suggested that the Treasury Department and the IRS have a compelling interest in instituting a complaint mechanism to obtain vital information that they can use in determining which taxpayers to audit. One commenter suggested permitting registered apprenticeship programs to petition the Treasury Department if they believe that a taxpayer is falsely claiming that the program is unable to meet the taxpayer's request for qualified apprentices.

While the IRS takes information it receives regarding alleged tax violations very seriously, the comments requesting that the final regulations require a specific process regarding complaints are not adopted. Similar to the comments addressed in Section I.D.1. of this Summary of Comments and Explanation of Revisions regarding overall IRS administration, the comments concerning how the IRS should address reports of alleged tax violations are outside the scope of these final regulations. Additionally, the commenters overstate the usefulness of such information in the pre-filing context with respect to the PWA requirements. A laborer or mechanic might be paid wages at rates less than

the applicable prevailing wage rates would require for such work, but that does not mean the laborer or mechanic was underpaid for purposes of section 45(b)(7)(A), unless and until a tax return claiming the increased credit amount is filed. The PWA requirements apply to the taxpayer, and the taxpayer must ensure that laborers and mechanics are paid wages at rates not less than the applicable prevailing wage rates for construction, alteration, or repair of a qualified facility. If a taxpayer, contractor, or subcontractor underpays a laborer or mechanic and does not subsequently correct the underpayment with the appropriate backpay and interest and pay the penalty amount, then the increased credit amount will be disallowed by the IRS.

However, the Treasury Department and the IRS acknowledge the value in encouraging internal complaint and anti-retaliation procedures on facilities for which taxpayers acknowledge they anticipate claiming an increased credit amount by satisfying the PWA requirements. As discussed in Section VII.D.3. of this Summary of Comments and Explanation of Revisions, the final regulations include the existence of these procedures as a factor in determining whether a failure to satisfy the PWA requirements was due to intentional disregard. Further, these final regulations add as factors in determining intentional disregard whether the taxpayer posted information on how to contact the appropriate office to report suspected failures and whether in response to any complaint, the taxpayer investigated the complaint and took appropriate action to remedy the situation.

Additional commenters proposed that the Treasury Department and the IRS clarify that workers who report PWA violations are protected by the anti-retaliation framework enacted under the Taxpayer First Act (26 U.S.C. 7623 *et seq.*) (TFA). Commenters raised that section 7623(d)(1) states that no employer, contractor, or subcontractor may “discharge, demote, suspend, threaten, harass, or in any other manner discriminate” against an employee who has provided information or assisted in “an investigation regarding underpayment of tax or any conduct which the employee reasonably believes constitutes a violation of the Internal Revenue laws or any provision of Federal law relating to tax fraud.” Commenters stated that the TFA’s anti-retaliation provisions under section 7623(d)(1) cover reporting to the Treasury Department, IRS, and related agencies, as well as internal reporting by a worker to their supervisors.

Commenters emphasized that section 7623(d)(2)(A) also provides the right to file a complaint with the Secretary of Labor with respect to any reprisals and provides for a private right of action in district court in the event that the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint.

The application of section 7623, including the anti-retaliation provision enacted under the TFA, is outside the scope of these final regulations. However, whether laborers and mechanics were provided with a written notice of the rights conferred by the TFA is included as a factor the IRS will consider in determining if a failure to comply with the PWA requirements was due to intentional disregard.

Additionally, IRS Form 3949–A, *Information Referral*, may be submitted by anyone with information about an alleged tax violation. The ability of any individual or organization to notify the IRS of specific and credible suspected tax violations serves as a powerful deterrent that supports voluntary compliance and has the potential to provide the IRS with information to identify and address noncompliance.

Commenters acknowledge that at any point before the tax return is filed, it is within the taxpayer’s discretion to refrain from claiming the increased credit amount and avoid the responsibility to make any related payments. Even so, commenters stated that the IRS is not limited in imposing conditions that the taxpayer must meet at the time of the construction, alteration, or repair to later claim the increased credit amount. The Treasury Department and the IRS agree that for those taxpayers that claim the increased credit amount on a return, the obligation to pay prevailing wages attaches as of the time that the work was performed. The final regulations prescribe correction procedures that apply on a retroactive basis, including interest accruing on any correction amounts from the date of the failure, to account for past failures that occurred at the time the construction, alteration, or repair work was performed.

II. PWA Transition Rule

Under the BOC Exception in sections 30C, 45, 45Q, 45V, 45Y, and 179D, taxpayers may claim the amount of the increased credit or deduction without satisfying the PWA requirements if construction (or installation with respect to section 179D) “begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the [PWA requirements].” The Treasury Department and the IRS

published Notice 2022–61 on November 30, 2022, providing initial guidance with respect to the PWA requirements and starting the 60-day period described in those sections. Unless the One Megawatt Exception applies, taxpayers who do not meet the BOC Exception under these Code sections would need to satisfy the applicable PWA requirements to claim the increased amount of credit or deduction. Under sections 45L, 45U, 45Z, and 48C, there is no BOC Exception or One Megawatt Exception, so taxpayers need to satisfy the applicable PWA requirements to claim the increased credit amount regardless of when construction began or how small the facility (or respective underlying creditable activity) may be.

As enacted or amended by the IRA, the sections containing PWA provisions have various statutory effective dates. The PWA provisions in section 30C apply to property placed in service after December 31, 2022.¹¹ The PWA provisions in section 45 apply to facilities placed in service after December 31, 2021.¹² The PWA provisions in section 45L apply to dwelling units acquired after December 31, 2022.¹³ The PWA provisions in section 45Q apply to facilities or equipment placed in service after December 31, 2022.¹⁴ Section 45Y applies to facilities placed in service after December 31, 2024.¹⁵ In contrast, the effective dates of the PWA provisions in sections 45U, 45V, and 45Z are stated in relation to when the respective electricity, hydrogen, or transportation fuel is produced. Section 45U applies to electricity produced and sold after December 31, 2023, in taxable years beginning after such date.¹⁶ Section 45V applies to hydrogen produced after December 31, 2022.¹⁷ And Section 45Z applies to transportation fuel produced after December 31, 2024,¹⁸ but includes a special rule (described in Section IX.G. of this Summary of Comments and Explanation of Revisions) with respect to the Prevailing Wage Requirements if a facility is placed in service before January 1, 2025. The new allocation amounts available under section 48C(e)

are effective on January 1, 2023.¹⁹ The amendments to section 179D apply to taxable years beginning after December 31, 2022.²⁰

Several commenters requested that the final regulations clarify whether the PWA requirements apply to work performed before January 29, 2023, both with respect to Code sections with a BOC Exception and those without a BOC Exception. Commenters stated that it would be unfair to require taxpayers to comply with the PWA requirements with respect to these activities. Several commenters stated that the BOC Exception was intended to ensure that the PWA requirements are not applied retroactively and asked for a uniform rule applicable to all increased credit amount provisions that the PWA requirements do not apply before the BOC Exception trigger date. Other commenters asked that activities that occurred before the IRS issued Notice 2022–61 (November 30, 2022) be excluded from the PWA requirements. Some commenters stated that significant preliminary activities may have occurred prior to the enactment of the IRA, and they asked that the final regulations clarify that the PWA requirements do not apply to these activities, regardless of whether a BOC Exception may apply. One commenter suggested that the PWA requirements apply only after these final regulations are issued.

The Treasury Department and the IRS have determined that given the complexity of the PWA requirements, the uncertainty regarding the potential retroactive effects of the PWA requirements, and the benefits to tax administration gained with consistency across the various Code sections containing PWA requirements, that a transition rule is appropriate.

The final regulations provide that any work performed before January 29, 2023 (the date that is 60 days after the publication of Notice 2022–61) is not subject to the PWA requirements, regardless of whether there is an applicable BOC Exception. Thus, with respect to sections 45L, 45Z, and 48C, although there is no applicable BOC Exception and regardless of when construction began, taxpayers must only comply with the PWA requirements for the construction, alteration, or repair work (as applicable) occurring on or after January 29, 2023. Section 45U is not subject to the transition rule because, as described in Section IX.D. of this Summary of Comments and Explanation of Revisions, the Prevailing

Wage Requirements of section 45U only apply to alterations or repairs of a qualified nuclear power facility that occur after December 31, 2023.

The transition rule also applies for taxpayers that may initially satisfy the BOC Exception, but later fail to meet the BOC Exception (for example, failing to meet the Continuity Requirement). These taxpayers must satisfy the PWA requirements for construction, alteration, or repair (as applicable) that occurs on or after January 29, 2023, but do not need to meet the PWA requirements for work that occurred prior to that date.

III. Beginning of Construction

A. Beginning of Construction Under the IRS Notices

The IRS Notices describe two methods of establishing that construction of a facility has begun: (i) starting physical work of a significant nature (Physical Work Test), and (ii) paying or incurring five percent or more of the total cost of the facility (Five Percent Safe Harbor).

Physical work of a significant nature can include both on-site and offsite work. Notice 2013–29 describes that in the case of a wind turbine, on-site physical work of a significant nature begins with the beginning of the excavation for the foundation, the setting of anchor bolts into the ground, or the pouring of the concrete pads of the foundation. Physical work of a significant nature does not include preliminary activities such as planning or designing, securing financing, exploring, researching, obtaining permits, licensing, conducting surveys, environmental and engineering studies, clearing a site, test drilling of a geothermal deposit, test drilling to determine soil condition, or excavation to change the contour of the land. Notice 2013–29 explains that removal of existing turbines and towers is considered preliminary work and not physical work of a significant nature.

Under the Five Percent Safe Harbor, if a taxpayer has paid or incurred five percent or more of the total cost of the facility and thereafter the taxpayer makes continuous effort to advance towards completion of the facility, then the construction of the facility will be considered to have begun. All costs properly included in the depreciable basis of the facility are taken into account but the cost of land or any property not integral to the facility is not included. Taxpayers can generally choose to structure their business affairs to meet either the Physical Work Test or the Five Percent Safe Harbor. However,

¹¹ IRA § 13404(f).

¹² IRA § 13101(k).

¹³ IRA § 13304(f).

¹⁴ IRA § 13104(i)(1). The amendments made to the definition of a qualified section 45Q facility apply to facilities or equipment the construction of which begins after the date of enactment of the IRA (that is, after August 16, 2022).

¹⁵ IRA § 13701(c).

¹⁶ IRA § 13105(c).

¹⁷ IRA § 13204(a)(5).

¹⁸ IRA § 13704(c).

¹⁹ IRA § 13501(e).

²⁰ IRA § 13303(d).

once a taxpayer meets either method, beginning of construction is established and a taxpayer may not alternate between methods.

B. Beginning of Construction and the BOC Exception Under Notice 2022–61 and the Proposed Regulations

Absent an exception, the PWA requirements apply with respect to the construction, alteration, or repair of a qualified facility. For purposes of the Prevailing Wage Requirements, section 45(b)(7)(A) provides that the taxpayer must ensure the payment of prevailing wages to laborers and mechanics employed in: (i) the “construction” of the qualified facility, and (ii) for “the alteration or repair” of the qualified facility during the 10-year period after the facility is placed in service. For purposes of the Apprenticeship Requirements, section 45(b)(8) provides that the taxpayer must satisfy the Labor Hours Requirement “with respect to the construction of any qualified facility.”

For purposes of determining when construction or installation begins under the BOC Exception, Notice 2022–61 incorporates by reference the IRS Notices. While Notice 2022–61 served to define the beginning of construction under the BOC Exception, Notice 2022–61 also states generally that it provides “guidance for determining the beginning of construction” under sections 30C, 45, 45Q, 45V, 45Y, 48, and 48E, and the beginning of installation under section 179D solely for purposes of section 179D(b)(3)(B)(i). The preamble to the Proposed Regulations explained that until further guidance is issued on determining when construction begins under the applicable Code sections, taxpayers may continue to rely on the guidance provided in Notice 2022–61 and principles similar to those under the IRS Notices for purposes of determining when construction begins.

Section 3 of Notice 2022–61 contains guidance with respect to the Prevailing Wage Requirements. Section 3.03(4) of Notice 2022–61 provides that “‘construction, alteration, or repair’ means ‘construction, prosecution, completion, or repair’ as defined under 29 CFR 5.2(j).” In proposing rules under section 45(b)(7)(A), the Treasury Department and the IRS sought to incorporate those rules of the DBA regime relevant to the intent of the PWA requirements and useful for tax administration. Thus, consistent with Notice 2022–61, proposed § 1.45–7(d)(2)(i) would have provided that the “term construction, alteration, or repair generally means construction, prosecution, completion, or repair as

defined in 29 CFR 5.2” of the DBA regulations.

In general, the DBA applies to contracts for construction, alteration or repair of public buildings and public works and requires payment of prevailing wages with respect to all mechanics and laborers employed directly on the site of the work.²¹ Under 29 CFR 5.2, construction, alteration, or repair is defined expansively to include all types of work done on a particular building or work at the site of the work, as defined in 29 CFR 5.2, by laborers and mechanics employed by a contractor or subcontractor. This work includes, but is not limited to, altering, remodeling, installing of items fabricated offsite, painting and decorating, manufacturing, or furnishing of materials, articles, and supplies or equipment on the site of the building or work, and certain demolition or removal activities.

Notice 2022–61 and proposed § 1.45–7(d)(2)(i) would have defined construction, alteration, or repair by reference to the DBA. This means that the activity triggering the PWA requirements for a facility subject to the PWA requirements is determined by reference to activities that constitute construction under the DBA. A taxpayer must begin to satisfy the PWA requirements once construction, alteration, or repair activities occur if those activities are described in 29 CFR 5.2. Under this definition, construction, alteration, or repair would mean all types of work performed at the location of the qualified facility.

C. Comments on Determining the Beginning of Construction for PWA Purposes

Several commenters requested clarification concerning when the obligation to comply with the PWA requirements arises in the lifespan of a construction project apart from satisfying the BOC Exception, including what methods may be relied upon (the Physical Work Test or Five Percent Safe Harbor) and the Continuity Requirement. Another commenter suggested that the final regulations incorporate the tests from the IRS Notices into the final regulations. Commenters indicated that there is confusion regarding the precise scope of the PWA requirements because the word “construction” has different meanings under the DBA and the IRS Notices. One commenter stated that the preamble’s use of both “beginning of construction” and “start of construction” was confusing.

²¹ 40 U.S.C. 3142(a) and (c).

Several commenters requested clarification on when construction begins for purposes of the PWA requirements, noting that initial activities that constitute construction under 29 CFR 5.2 and would be subject to prevailing wage requirements under the DBA may not be the same activities that constitute the beginning of construction under the IRS Notices. A commenter also requested that the final regulations provide an exception from the PWA requirements for work subject to an agreement entered into prior to January 29, 2023, or give taxpayers who are a party to such agreements one year from the date the final regulations are published to comply with the PWA requirements. Further, commenters requested that the final regulations clarify that the beginning of construction is determined under existing tax principles and that preliminary activities, such as demolition or land clearing included under the DBA as work, do not count as the beginning of construction for PWA purposes. A commenter requested that the final regulations confirm that the end of construction corresponds to when an asset is placed in service and that activities afterward are not subject to the PWA requirements unless they are a covered alteration or repair.

A commenter contended that the BOC Exception is anti-competitive and places an undue burden on new projects, as compared to projects that meet the BOC Exception, because projects meeting the BOC Exception will receive all the benefits of meeting Prevailing Wage Requirements without having to incur any of the associated costs. The commenter emphasized the importance of promoting a level playing field for all taxpayers interested in qualifying for increased credit amounts across clean energy industries.

D. Beginning of Construction for Purposes of the BOC Exception and the PWA Requirements in General

The Treasury Department and the IRS understand commenters’ concerns and the potential for confusion in determining the beginning of construction for purposes of the BOC Exception and the PWA requirements. While the Physical Work Test is very similar to the definition of construction under the DBA, certain preliminary activities are treated differently. Some activities constituting construction under the DBA definition would not constitute construction activities under the Physical Work Test. For instance, under the Physical Work Test, the demolition and removal of an existing structure would be considered a

preliminary activity, not the “beginning of construction.” However, under the DBA definition, the same activity would constitute construction. The Five Percent Safe Harbor, which has no equivalent under DBA, looks solely at incurred costs in determining whether construction has begun. Under all three tests, once construction begins a taxpayer must satisfy the PWA requirements with respect to all construction, alteration, or repair as defined in proposed § 1.45–7(d)(2) by reference to 29 CFR 5.2.

The Treasury Department and the IRS have determined that using the DBA definition of construction to define the activities that mark the start of the obligation to comply with the PWA requirements for a qualified facility subject to the requirements provides a uniform rule across all the relevant Code sections. This is also consistent with the general approach in the Proposed Regulations and Section I.A. of this Summary of Comments and Explanation of Revisions of adopting DBA concepts when they are relevant to sound tax administration. Using the DBA definition of construction as the triggering activity provides a clear and uniform rule for taxpayers to determine when the obligation to comply with the PWA requirements begins. Thus, comments proposing use of the IRS Notices to determine the beginning of construction for purposes of the PWA requirements are not adopted. Providing a uniform rule that is generally applicable across all of the PWA provisions provides the necessary clarity sought by commenters. The final regulations provide that the activities that mark the start of the obligation to comply with the PWA requirements is any activity that constitutes construction (as defined in § 1.45–7(d)(3)) of a qualified facility.

Unless an exception applies, taxpayers are required to comply with the PWA requirements once a laborer or mechanic performs any work that is considered construction, alteration, or repair of the qualified facility (including work on the qualified facility that occurs at a secondary site). Thereafter, all work with respect to the construction (or alteration or repair), as defined in § 1.45–7(d)(3) (by cross-reference to 29 CFR 5.2), of the qualified facility is subject to the applicable PWA requirements. The beginning of construction, for purposes of satisfying the BOC Exception, will continue to be determined under the IRS Notices.

In light of the differences between the tests, and because Notice 2022–61 as well as the Proposed Regulations indicated that taxpayers could rely on

the IRS Notices for determining when construction begins, the final regulations provide transition relief for taxpayers who applied the definitions in the IRS Notices for purposes of determining those activities that were considered construction, alteration, or repair of the facility subject to the PWA requirements in the initial stages of construction. The final regulations waive penalties for taxpayers who applied the IRS Notices for determining when the obligation to pay prevailing wages began, provided the taxpayer makes the appropriate correction payments to the impacted workers within 180 days of the publication of the final regulations. As part of the transition relief, the final regulations also allow taxpayers to use the IRS Notices for determining when construction begins under section 45(b)(8)(A) to determine the applicable percentage of labor hours performed by qualified apprentices required in satisfying the Labor Hours Requirement.

IV. One Megawatt Exception

Under the One Megawatt Exception in section 45(b)(6)(B)(i), a qualified facility that has a maximum net output of less than one megawatt (as measured in alternating current) is eligible for the increased credit amount. The preamble to the Proposed Regulations would have provided that a qualified facility’s nameplate capacity determines whether the facility meets the One Megawatt Exception. Similar exceptions apply for a qualified facility with a maximum net output of less than one megawatt (as measured in alternating current) under sections 45Y(a)(2)(B)(i) and 48E(a)(2)(A)(ii)(I); an energy project with a maximum net output of less than one megawatt of electrical (as measured in alternating current) or thermal energy under section 48(a)(9)(B)(i); and energy storage technology with a capacity of less than one megawatt under section 48E(a)(2)(B)(ii)(I).

Proposed § 1.45–6(c) would have provided that nameplate capacity for an electrical generating unit means the maximum electrical generating output in megawatts that the unit is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition provided in 40 CFR 96.202. If applicable, the International Standard Organization (ISO) conditions are used to measure the maximum electrical generating output or usable energy capacity.

Commenters stated that the term “maximum net output” is ambiguous and that no method is provided for

determining such output. A few commenters also supported the Proposed Regulation’s definition of maximum net output and suggested carrying the nameplate capacity definition of maximum net output forward into its final rule. One commenter raised that for inverter-based resources, like solar and storage facilities, maximum net output could be determined at different stages. For such facilities, the commenter recommended clarifying that only post-inverter maximum electrical generating output qualifies as maximum net output. The final regulations do not adopt these changes because the definition in proposed § 1.45–6(c) contained testing methodologies and conditions and the statute already requires the measurement be in alternating current. The final regulations adopt the definition without change.

Another commenter suggested clarifying when multiple energy projects constitute a single facility for purposes of the One Megawatt Exception under section 45. One commenter suggested adopting the eight factors of a single project determination listed in Notice 2013–29 and Notice 2018–59, to determine when multiple energy projects constitute a single facility for purposes of the One Megawatt Exception. The commenter stated that it could be difficult, such as for solar arrays constructed on multiple buildings, to determine when multiple projects may constitute a single facility. Another commenter stated that taxpayers should not be permitted to subdivide projects and construction contracts in an effort to evade the Prevailing Wage Requirements using the One Megawatt Exception. The commenter stated that to prevent taxpayers from manipulating the One Megawatt Exception, the Treasury Department should evaluate whether facilities will be using the same transmission lines or connecting to the same powerhouse. One commenter recommended using certain factors, including ownership, proximity, and connection to transmission lines or powerhouse, to determine whether multiple energy projects may be deemed to constitute one facility.

The definition of a qualified facility, energy project, or energy storage technology under the respective Code section controls for purposes of the One Megawatt Exception. Therefore, the definition of qualified facility under section 45 governs for purposes of the One Megawatt Exception under section 45(b)(6)(B)(i). Accordingly, the application of the aggregation principles issued under Notice 2013–29 and Notice

2018–59 is outside the scope of these final regulations. Further, the Section 48 Proposed Regulations would provide guidance for taxpayers regarding the definition of an energy project. The Section 48 Proposed Regulations would provide rules for purposes of the One Megawatt Exception as well as other IRA bonus provisions for domestic content and energy communities. As noted previously, comments pertaining to the 48 Proposed Regulations will be addressed in a future Treasury decision. The applicable scope of the PWA requirements is further discussed in Section VI. of this Summary of Comments and Explanation of Revisions.

V. Application to the Taxpayer

A. Definition of Taxpayer, Contractor, and Subcontractor

Generally, the Proposed Regulations would have defined the term taxpayer to mean any taxpayer as defined in section 7701(a)(14), including applicable entities described in section 6417(d)(1)(A). This generally will be the entity that claims the credit (as increased under section 45(b)(6)) or makes an election under section 6417 with respect to such credit amount on a Federal income tax return.

The Proposed Regulations would have provided that in order to earn the increased credit amount under section 45(b)(6) by satisfying the PWA requirements, the taxpayer would be solely responsible for: (i) ensuring that the relevant laborers and mechanics are paid wages not less than the prevailing rate whether employed directly by the taxpayer, or by a contractor, or a subcontractor, and (ii) ensuring that the Apprenticeship Requirements are satisfied. The Proposed Regulations also would have provided that the taxpayer would be solely responsible for the PWA recordkeeping requirements, the correction and penalty provisions under the Prevailing Wage Requirements, and the Good Faith Effort Exception and Apprenticeship Cure Provision under the Apprenticeship Requirements. However, nothing in the Proposed Regulations was intended to supersede requirements that might otherwise apply to a taxpayer, contractor, or subcontractor under State or Federal law.

Commenters requested guidance concerning whether the taxpayer is responsible for ensuring the compliance with the PWA requirements by contractors and subcontractors if the taxpayer may not be in privity of contract with all contractors and subcontractors. Commenters noted that

proposed § 1.45–7(d)(3) would have defined a contractor as any person that enters into a contract with the taxpayer for the construction, alteration, or repair of a qualified facility. However, commenters stated that the taxpayer is not always in privity of contract with each contractor and subcontractor. Similarly, another commenter suggested that the definition of contractor be revised to address situations in which the taxpayer is not in privity of contract with the contractors, because the sponsor or developer of the facility assumes responsibility for construction of the facility. The final regulations clarify that the definition of contractor applies to those situations. Additionally, a commenter stated that DOL guidance under 29 CFR 5.5(a)(6) provides that prime contractors have the responsibility for the compliance of all the subcontractors on a covered prime contract, whereas the Proposed Regulations state that the taxpayer is solely responsible for PWA compliance. The final regulations retain the requirements in the Proposed Regulations that the taxpayer is solely responsible for the PWA requirements, including ensuring that the relevant laborers and mechanics are paid wages at rates not less than the prevailing rates whether employed directly by the taxpayer, a contractor, or a subcontractor and ensuring that the Apprenticeship Requirements are satisfied.

A commenter suggested that the final regulations adopt a safe harbor allowing taxpayers to avoid corrections and penalty payments if the taxpayer contracted with a third party to ensure compliance with relevant PWA requirements. Section 45(b)(7)(A) requires that the taxpayer ensures that laborers and mechanics are paid wages at rates not less than the applicable prevailing wage rates with respect to the construction, alteration, or repair of a qualified facility and under section 45(b)(8)(A), that the required number of labor hours with respect to the construction of a qualified facility are performed by qualified apprentices. The burden to ensure that these requirements are met falls with the taxpayer. The final regulations do not adopt the suggestion to incorporate a safe harbor, but the penalty waiver in § 1.45–7(c)(6) and described in Section VII.D.4. of this Summary of Comments and Explanation of Revisions provides an appropriately limited exception to corrections and penalty payments in the case of inadvertent errors.

Similarly, one commenter requested that the final regulations permit contractors or subcontractors to make

corrective payments on behalf of the taxpayer directly to laborers or mechanics. The correction and penalty provision in section 45(b)(7)(B)(i) requires that the taxpayer makes payment to the laborer or mechanic of the correction amount. The Treasury Department and the IRS appreciate commenters' suggestions to encourage methods that result in prompt correction payments to laborers and mechanics. Although the statute requires that the correction payment be made by the taxpayer to the laborers and mechanics, it does not prescribe the method by which the taxpayer must make payment. The final regulations similarly do not prescribe a specific method of payment and adopt the proposed rule without change. Regardless of how payments are made, taxpayers must maintain records demonstrating when and how correction payments were made.

A few commenters suggested that the final regulations clarify the requirement that the taxpayer ensure that all laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing rates applies to all subcontractors. Specifically, taxpayers stated that the DBA definition of subcontractor indicates that a subcontractor includes subcontractors of any tier, and suggested that the final regulations use the same term in the definition of subcontractor. The definition of subcontractor in the final regulations clarifies that the requirement applies to all subcontractors, including those who contract with other subcontractors.

Another commenter suggested that the use of subcontractor labor providers, such as labor brokers, should be explicitly discouraged because of the risk of fraud. This suggestion is overbroad and inconsistent with the plain language of section 45, which anticipates the use of contractors and subcontractors. This suggestion is not adopted.

B. Transferability Pursuant to Section 6418

The Treasury Department and the IRS requested comments on the application of the PWA correction and penalty provisions in the context of transferred credits. The credit available under section 45, including the increased credit amount available under section 45(b)(6), is an eligible credit subject to section 6418. Proposed § 1.45–7(c)(1)(iv) and proposed § 1.45–8(e)(2)(iv) would have provided that to the extent an eligible taxpayer, as defined in section 6418(f)(2), has determined an increased

credit amount under section 45(b)(6) and transferred such increased credit amount as part of a specified credit portion pursuant to section 6418(a), the obligation to make correction and penalty payments under proposed § 1.45–7(c)(1)(i) and (ii) and the penalty payment under proposed § 1.45–8(e)(2)(i) remains with the eligible taxpayer. No commenters disagreed with having the eligible taxpayer remain responsible for the PWA correction and penalty provisions under proposed § 1.45–7(c)(1)(iv) or proposed § 1.45–8(e)(2)(iv). Consequently, these final regulations adopt proposed § 1.45–7(c)(1)(iv) and proposed § 1.45–8(e)(2)(iv) without change. However, commenters raised other issues related to the PWA provisions in the context of a transfer pursuant to section 6418, which are addressed in the following paragraphs.

Under proposed § 1.45–7(c)(1)(iv) and proposed § 1.45–8(e)(2)(iv), to the extent an eligible taxpayer transfers a credit increased pursuant to the PWA requirements, the obligation to satisfy the PWA requirements becomes binding upon the earlier of the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer or the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. One commenter stated that if the eligible taxpayer is a calendar year taxpayer and the transferee taxpayer is a fiscal year taxpayer, then the ability of the eligible taxpayer to make any correction or penalty payments may be shortened.

Section 6418 and the final regulations thereunder (TD 9993) published in the **Federal Register** (89 FR 34770) on April 30, 2024 (6418 Final Regulations), provide that the transferee taxpayer takes into account the transferred credit in the first taxable year ending on or after the taxable year of the eligible taxpayer with respect to which the credit was determined. Consequently, if an eligible taxpayer has a calendar year taxable year and the transferee taxpayer has a fiscal year taxable year, the transferee taxpayer's return due date generally will be after the eligible taxpayer's return due date. In the event a transferee taxpayer files a return that claims an increased credit amount transferred from an eligible taxpayer prior to the eligible taxpayer filing its return, the obligation to have satisfied the PWA requirements becomes legally binding upon the filing of the return of the transferee taxpayer. However, in any scenario, eligible taxpayers will have the ability to make any required

correction and penalty payments as provided under section 45(b)(7)(B)(iv), which allows such payments to be made within 180 days of a determination by the IRS with respect to a failure regarding prevailing wages, or under section 45(b)(8)(D)(i) with respect to apprenticeship failures. The transferee taxpayer filing its tax return before the eligible taxpayer does not shorten this period. Further, the eligible taxpayer and the transferee taxpayer are required to attach a transfer election statement describing specific details relating to the transaction, including any increased credit amounts, and prior to filing any tax returns, the parties should have verified eligibility under the PWA provisions. Therefore, the Treasury Department and the IRS did not revise the proposed rule in these final regulations.

Commenters recommended specifying that if a credit amount increased pursuant to the PWA requirements is transferred to multiple transferee taxpayers, the responsibility to make correction and penalty payments remains indivisible with the eligible taxpayer. This comment is consistent with the Proposed Regulations, which did not distinguish between situations with one or multiple transferee taxpayers. These final regulations adopt the proposed rule without change.

One commenter recommended that transferee taxpayers being transferred an eligible credit increased pursuant to the PWA requirements should be secondarily liable for any correction and penalty payments. The commenter stated that if the transferee taxpayer is not secondarily liable, then the amounts may not be paid because the eligible taxpayer will have already received the consideration from the transfer of the tax credit. Further, the commenter suggested that the transferee taxpayer should be required to keep the same records as the eligible taxpayer in order to demonstrate reasonable cause with respect to excessive credit transfers and should also be required to contractually bind the eligible taxpayer to meet the PWA requirements, indemnifying the transferee taxpayer for any such payments it is secondarily required to make.

The Treasury Department and the IRS do not adopt these changes. As explained in the preamble to the Proposed Regulations, credit amounts increased pursuant to the PWA requirements are part of determining the eligible credit by the eligible taxpayer. The 6418 Final Regulations confirm that any specified credit portion is a proportionate share of the entire eligible credit, including any increases pursuant

to the PWA requirements. Therefore, it is part of the eligible taxpayer's responsibility to satisfy the PWA requirements and requiring the eligible taxpayer to make any correction or penalty payments remains appropriate. Requiring the transferee taxpayer to be secondarily liable may inappropriately shift the responsibility to satisfy the PWA requirements. It is the responsibility of the transferee taxpayer under section 6418 and the 6418 Final Regulations to perform due diligence to show reasonable cause in the event of an excessive credit transfer, but changes to those rules are outside the scope of these final regulations. Additionally, specific recordkeeping requirements for the eligible taxpayer and transferee taxpayer(s) under section 6418 are addressed in the 6418 Final Regulations and are outside the scope of these final regulations.

A commenter recommended that a transferee taxpayer should be able to rely on assurances from the eligible taxpayer that all covered work was performed under the terms of a qualifying project labor agreement (discussed in Section V.D. of this Summary of Comments and Explanation of Revisions) to demonstrate "reasonable cause" in the context of an excessive credit transfer relating to the PWA requirements. These final regulations do not adopt this suggestion as excessive credit transfers are outside the scope of these final regulations and are addressed in the 6418 Final Regulations.

C. Application to Indian Tribal Governments and the Tennessee Valley Authority

The preamble to the Proposed Regulations explained that the statutory language of the IRA does not reflect any intent to include exceptions from the PWA requirements other than the BOC Exception and the One Megawatt Exception. Consequently, the Proposed Regulations would not have included a rule that would exempt Indian Tribal governments or the Tennessee Valley Authority (TVA) from the PWA requirements. The Treasury Department and the IRS requested comments on the need for any exceptions, including for Indian Tribal governments or the TVA, from the PWA requirements in addition to those expressly described in the statute.

1. Indian Tribal Governments

In accordance with Executive Order 13175 (Consultation and Coordination with Indian Tribal governments) and Executive Order 14112 (Reforming Federal Funding and Support for Tribal

Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination), the Treasury Department and the IRS support the right of Indian Tribes to self-govern and recognize that Indian Tribes exercise inherent sovereign powers over their members and territory. The Treasury Department and the IRS are guided by the fundamental principles in Executive Orders 13175 and 14112. Under those principles, the Treasury Department and the IRS have an obligation to consider the concerns raised by Tribes and, to the extent permitted by law, address those concerns in the final regulations.

On September 25, 2023, the Treasury Department and the IRS held a Tribal consultation with Tribal leaders requesting assistance in addressing questions related to the PWA requirements in the Proposed Regulations. Through consultation and in response to the Proposed Regulations, the Treasury Department and the IRS received numerous comments regarding an exception to the PWA requirements for projects constructed by Indian Tribal governments. A number of commenters recommended that Indian Tribal governments should not be exempted from the PWA requirements and cited to the lack of statutory basis to grant an exception. In contrast, other commenters supported an exception to the PWA requirements for Indian Tribal governments.

A. Prevailing Wage Requirements and Indian Tribal Governments

With respect to the Prevailing Wage Requirements, commenters suggested that requiring projects located on Tribal lands to comply with wage standards set by the DOL undermines Tribal sovereignty. Some commenters stated that the DOL provides an exception from the DOL prevailing wage rates for work done by Indian Tribal governments using their own employees, and advocated that the final regulations, at a minimum, contain a similar rule under the IRA.

Commenters also stated that the DOL prevailing wage rates often are defined at the county level, which may include higher cost urban areas and could negatively impact projects on Tribal lands that often occur in the rural portions of such counties. These commenters stated that complying with wage standards set by the DOL for IRA projects could place additional administrative burdens on Tribes by requiring Tribes to administer two sets of prevailing wages (DOL prevailing wage standards for IRA projects and Tribal prevailing wage standards for

other projects). As an alternative to permitting Indian Tribal governments to set their own prevailing wage rates for IRA projects, commenters suggested defining the term locality to include Tribal lands as a separate category to allow Tribes to submit a request to the DOL for a supplemental wage determination for that specific Tribal locality.

With respect to the Prevailing Wage Requirements, the Treasury Department and the IRS continue to understand the statutory language of the Code as not reflecting an intent to entirely exempt Indian Tribal governments from the PWA requirements. The statutory language also does not reflect an intent to allow Indian Tribal governments to substitute their own prevailing wage rates for those generally required under the DBA.

However, in accordance with Executive Order 14112, the final regulations provide two special rules that apply to Indian Tribal governments (including a subdivision, agency, or instrumentality of an Indian Tribal government). First, the final regulations provide that an Indian Tribal government, as defined in section 30D(g)(9) of the Code, is excepted from the Prevailing Wage Requirements under the IRA with respect to laborers and mechanics that are employees, within the meaning of section 3121(d)(2), of the Indian Tribal government. This rule also applies to joint ownership arrangements that involve an Indian Tribal government (including a subdivision, agency, or instrumentality of an Indian Tribal government), but only with respect to the employees, within the meaning of section 3121(d)(2), of the Indian Tribal government. As stated in some comments from Tribes, the DOL provides an exception from the DOL prevailing wage rates for work done by Tribal governments using their own employees. Specifically, under the DBA, a government agency may perform construction work in-house with its own employees rather than contract out the work. Work performed by these employees generally is not subject to the DBA requirements because governmental agencies are not considered contractors or subcontractors under the DBA. This is known as the force account exception. The DOL has explained that in cases in which an Indian Tribal government performs work with its own employees, the force account exception to the DBA generally applies and the Tribal government is not required to pay DOL-determined prevailing wages for work done by its own employees. Tribes historically have

relied on this exception. Under these final regulations, Tribes may continue that practice for purposes of the Prevailing Wage Requirements under the IRA.

Second, the Treasury Department and the IRS recognize that Tribal lands generally are not coextensive with a single geographic area for which the DOL may have made an applicable wage determination. Comments from Tribes requested that the final regulations define the term “locality” to include Tribal lands as a separate category to allow Tribes to submit a request to the DOL for a supplemental wage determination for specified Tribal lands. However, defining locality in this way would require that the DOL establish a new administrative process to implement a unique wage determination for Tribal lands; that process is outside of the authority of the Treasury Department and the IRS. Thus, these final regulations do not change the definition of locality to include Tribal lands as a separate category.

However, recognizing that Tribal lands are sovereign territories that may encompass or overlap with numerous geographic areas, the final regulations provide a special rule for Indian Tribal governments that perform construction, alteration, or repair of a facility on Indian land, as that term is defined in 25 U.S.C. 3501(2). Specifically, if the Indian land encompasses or overlaps more than one geographic area with respect to which the DOL has made an applicable wage determination, then the Indian Tribal government may choose the applicable wage determination for any one of those geographical areas and apply that applicable wage determination for work performed on any qualified facility that is located on the Indian land. If the Indian Tribal government chooses to use this alternative applicable wage determination, it must maintain and preserve records sufficient to document the applicable prevailing wage for each laborer, contractor, or subcontractor with respect to each qualified facility on Indian land. This rule applies to a qualified facility that is subject to joint ownership arrangements that involve an Indian Tribal government (including a subdivision, agency, or instrumentality of an Indian Tribal government). This rule is intended to ease the administrative burden on Indian Tribal governments because they can use a single applicable wage determination for all projects on Indian land.

b. Apprenticeship Requirements and Indian Tribal Governments

Regarding the Apprenticeship Requirements, some commenters supported an exception for Indian Tribal governments and stated that Tribes may have limited access to registered apprenticeship programs. These commenters stated that Tribal members may face burdens associated with participating in existing State registered apprenticeship programs that are located many miles away. A commenter requested clarification regarding whether Tribes, like States, have the sovereign and jurisdictional authority to develop and certify their own apprenticeship programs rather than being required to use the DOL approval process. The same commenter requested that the Treasury Department and the IRS review and report on any barriers that may disproportionately prevent Tribes from fulfilling the Apprenticeship Requirements. Commenters suggested that if Indian Tribal governments do not have authority to certify their own programs, then the Apprenticeship Requirements could force Tribal governments to rely on State or Federal apprenticeship programs, which may frustrate Indian Tribal governments' efforts to develop their Tribal workforce.

Commenters supporting an Indian Tribal government exception to the Apprenticeship Requirements also stated that the Good Faith Effort Exception places too much onus on Indian Tribal governments to obtain qualified apprentices. These commenters suggested that Indian Tribal governments could need to submit multiple requests to multiple apprenticeship programs and that Indian Tribal governments could need to search across non-Tribal areas to meet the Good Faith Effort Exception. These commenters suggested that the statute did not require this level of apprenticeship coverage. Commenters also stated that the Good Faith Effort Exception may not be met if a registered apprenticeship program can meet some, but not all of requests for qualified apprentices, and suggested that the Good Faith Effort Exception should be satisfied if a registered apprenticeship program could not fulfill more than 50 percent of a taxpayer, contractor, or subcontractor's request. These commenters also suggested that the Good Faith Effort Exception should be satisfied if a local registered apprenticeship program cannot provide more than 50 percent of the requested qualified apprentices. Commenters also stated that the Good Faith Effort

Exception is unreasonable for Indian Tribal governments in rural areas because of the limited access to registered apprenticeship programs. Finally, another commenter suggested creating a database for taxpayers to find Tribal apprenticeship programs within their State.

With respect to the Apprenticeship Requirements, the Treasury Department and the IRS recognize that there may be a limited number of registered apprenticeship programs with an area of operation that includes the geographic location of a facility located on Tribal lands. As explained in Section VIII.B.1.f. of this Summary of Comments and Explanation of Revisions, the final regulations clarify the scope of the Good Faith Effort Exception with respect to situations in which only part of the request is denied. The final regulations confirm that if there is no registered apprenticeship program with a geographic area of operation that includes the location of the facility, taxpayers will be deemed to satisfy the Good Faith Effort Exception for the qualified apprentices they (or the contractor or subcontractor) would have requested for that occupation and location.

Indian Tribal governments may also consider sponsoring their own registered apprenticeship programs to satisfy the Apprenticeship Requirements. The National Apprenticeship Act (NAA) of 1937 (29 U.S.C. 50) authorizes the Secretary of Labor to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices. The Treasury Department and the IRS have consulted with the DOL OA and understand based on that discussion that although neither the text of the NAA, nor the content of the NAA's implementing regulations at 29 CFR parts 29 and 30, explicitly addresses Indian Tribes, Indian Tribal governments may sponsor registered apprenticeship programs and obtain registration of such a Tribal apprenticeship program by a State or Federal governmental agency that has been designated for that purpose.

Federal apprenticeship regulations (see 29 CFR part 29) authorize the DOL to grant recognition, for Federal purposes, to State apprenticeship agencies for the purpose of registering and overseeing apprenticeship programs that operate within their respective jurisdictions, provided that such State apprenticeship agencies operate in accordance with the minimum standards for State apprenticeship agencies that are established by Federal apprenticeship regulations.

Nevertheless, the DOL retains the authority under Federal apprenticeship regulations to register any apprenticeship program that operates within the territory of the United States, provided that, as a general matter, the sponsor's proposed program and standards of apprenticeship satisfy the minimum requirements stipulated in 29 CFR parts 29 and 30.

Accordingly, Indian Tribal governments may register their own apprenticeship programs through the DOL OA or with a recognized State apprenticeship agency. In recognition of the unique trust and treaty responsibilities of the Federal Government to Tribal Nations, respect for Tribal sovereignty, and the nation-to-nation relationship between the Federal Government and Indian Tribes, Indian Tribal governments (including a subdivision, agency, or instrumentality of the Indian Tribal government) are encouraged but not required to register programs with the DOL OA. Taxpayers, contractors, and subcontractors can find more information on guidance issued by the DOL OA at <https://www.apprenticeship.gov/about-us/legislation-regulations-guidance>. For an updated map depicting the most recent information regarding registration agencies between the DOL OA and State apprenticeship agencies, please visit: <https://www.apprenticeship.gov/about-us/apprenticeship-system>.

2. Tennessee Valley Authority

Several commenters requested that the final regulations not provide an exception from the PWA requirements for the TVA, citing the lack of statutory authority for such an exception. The Treasury Department and the IRS agree. The final regulations do not create an exception to the PWA requirements for the TVA.

D. Project Labor Agreements

The preamble to the Proposed Regulations explained that pre-hire project labor agreements (PLAs) may be used to incentivize stronger labor standards and worker protections in the types of construction projects for which taxpayers may seek the increased credit amount, and having a PLA in place may help ensure compliance with PWA requirements. For these reasons, the Proposed Regulations would have provided that the penalty payment requirements would not apply with respect to a laborer or mechanic employed under a "qualifying project labor agreement" if any correction payment owed to the laborer or mechanic is paid on or before a return is filed claiming an increased credit

amount. The Proposed Regulations would have defined qualifying project labor agreement as “a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.” Proposed § 1.45–7(c)(6)(ii) would have provided that in order to be considered a qualifying project labor agreement, such agreement must at a minimum: (i) bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents; (ii) contain guarantees against strikes, lockouts, and similar job disruptions; (iii) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement; (iv) contain provisions to pay prevailing wages; (v) contain provisions for referring and using qualified apprentices consistent with section 45(b)(8)(A) through (C) and guidance issued thereunder; and (vi) be a collective bargaining agreement with one or more labor organizations (as defined in 29 U.S.C. 152(5)) of which building and construction employees are members, as described in 29 U.S.C. 158(f).

The Treasury Department and the IRS requested comments on the proposed treatment of PLAs, other ways taxpayers might use PLAs to meet the PWA requirements, and the proposed definition of a qualifying project labor agreement. Several comments were received addressing the proposed treatment of PLAs under the Proposed Regulations.

Several commenters asserted that the Treasury Department and the IRS should not exempt taxpayers using PLAs from the penalty payment requirements. Commenters stated that the proposed rule violates the plain text of the IRA, which includes no PLA provision and does not authorize the waiver of intentional violations and additional penalties based on a clean energy project developer's inclusion of a PLA requirement in its solicitation for construction services. Several commenters stated that the IRS should not incentivize or coerce the use of PLAs through a penalty waiver or other benefit. Commenters suggested that PLAs will discourage taxpayers from using their existing workforce. Commenters were also concerned with PLAs increasing the cost of construction. Another commenter suggested that PLA mandates would likely lead to a decrease in hiring of local, minority, women, veteran, and other potentially disadvantaged groups.

Other commenters stated that encouraging labor unions was not the intent of the IRA. A commenter also asserted that PLAs force contractors to replace employees with workers from unions, undermine workforce development strategies, force contractors to follow inefficient union work rules, expose workers to wage theft, and expose employers to multiemployer pension plan liabilities. The commenter also asserted that PLA mandates force employees to join a union and pay dues and discourage competition from nonunionized contractors. The commenter claimed that strikes have occurred on PLA projects and that PLAs will not improve efficiency in terms of safety, quality, or project delivery.

In contrast, other commenters asserted that PLAs help ensure compliance with the PWA requirements. Several commenters requested that taxpayers certifying that construction of a facility is subject to a PLA or a collective bargaining agreement should be entitled to a safe harbor or a rebuttable presumption of compliance with the PWA requirements. Commenters asserted that such a presumption would be warranted because PLAs provide assurances of compliance and contractors operating under PLAs typically pay wages at rates that are at or above the prevailing wage rates. At least one commenter suggested that the final regulations should clarify that a taxpayer is deemed to have satisfied the PWA requirements, including recordkeeping requirements, if the taxpayer can provide proof of a valid PLA.

Other commenters suggested that the final regulations create a two-tier compliance structure under which participants with PLAs are awarded a presumption of compliance on several requirements (or limited review by the IRS on examination) while other taxpayers not participating in PLAs should be subjected to heightened scrutiny by the IRS. A commenter stated that, in the absence of a PLA, violations of PWA requirements would be more prevalent. Therefore, the commenter suggested increasing the oversight and noncompliance penalties for non-PLA projects, mandating robust recordkeeping requirements for non-PLA projects (including the filing of certain documents with the DOL), and creating flexible ratio requirements for PLA projects. Another commenter suggested that taxpayers who are parties to both a collective bargaining agreement and PLA should automatically qualify for the Good Faith Effort Exception.

Some commenters stated that PLAs can help taxpayers ensure payment of prevailing wages, because PLAs will: (i) require employers to provide workers with notice of their pay rates; (ii) include integrated, enforceable grievance and dispute resolution procedures; and (iii) be administered and enforced by unions that are parties to PLAs. Another commenter stated that PLAs typically establish payments to third-party benefit trusts, and that IRS research shows that third-party information can help promote tax compliance. Additionally, another commenter stated that entitling taxpayers to a presumption of compliance if their construction project is subject to a PLA would mitigate enforcement work and therefore preserve IRS resources.

Further, several commenters stated that PLAs help promote the IRA's goals by improving efficiency, coordination, and consistency; reducing administrative costs; preventing increased costs and project delays; providing a steady supply of highly skilled labor; and preventing labor disputes. Some commenters recommended that taxpayers implementing PLAs be exempt from a determination that they intentionally disregarded the PWA requirements.

The Treasury Department and the IRS disagree with commenters asserting that the Proposed Regulation's provisions regarding qualifying project labor agreements are unwarranted, coercive, and would increase costs. For example, studies show that PLAs in general do not lead to a statistically significant increase in construction costs.²² If a taxpayer believes that a particular PLA would significantly raise the cost of constructing a facility, a taxpayer may choose not to enter into a PLA. In response to concerns about hiring of local, minority, women, veteran, and other potentially disadvantaged groups, the Treasury Department and the IRS note that PLAs often include provisions that create or strengthen equitable paths to construction jobs for underserved workers, including local hire requirements, equitable recruitment

²² Emma Waitzman & Peter Philips, UC Berkeley Labor Ctr., Project Labor Agreements and Bidding Outcomes: The Case of Community College Construction in California 3,51 (2017) (finding no statistically significant difference in costs between PLA and non-PLA projects); Peter Philips & Scott Littlehale, *Did PLAs on LA Affordable Housing Projects Raise Construction Costs?* (Univ. of Utah Dep't of Econ., Working Paper No. 2015–03, 2015) (finding no statistically significant difference in costs between PLA projects and non-PLA projects); Cong. Research Serv., R41310, Project Labor Agreements at 9 (2012) (surveying the empirical literature about the effects of PLAs on costs and finding that it was inconclusive).

goals, and community engagement requirements. Contrary to some commenters' concerns, the final regulations do not require non-union employees to join a union or to pay union dues. The National Labor Relations Act permits employees to choose not to join a union in their workplace. 29 U.S.C. 157. Non-members may choose not to pay union dues and instead pay agency fees that cover only the share of dues used directly for representation, such as for collective bargaining or grievance procedures. Moreover, the final regulations do not require any taxpayer to sign a PLA.

The Treasury Department and the IRS agree with commenters that qualifying project labor agreements can help ensure compliance with the PWA requirements. Under the final regulations, qualifying project labor agreements will be required to include provisions requiring the payment of wages at rates that are not less than the prevailing rates, include contract provisions complying with the Apprenticeship Requirements, and establish mechanisms for workers, labor organizations, and taxpayers to correct any underpayments. These requirements will help ensure that qualifying project labor agreements support compliance with the PWA requirements. The requirements in PLAs, including ongoing monitoring and administration by union officials, enforceable grievance and dispute resolution mechanisms, and notice of pay rates, will also help ensure compliance with the PWA requirements for claiming the increased credit amount. For example, the final regulations require that qualifying project labor agreements must include effective grievance and dispute resolution provisions that would provide workers and unions an independent mechanism for enforcing the PWA requirements included in a qualifying project labor agreement. Grievance and dispute resolution provisions allow workers to resolve disputes about the payment of prevailing wages and other violations of the qualifying project labor agreement before a taxpayer claims the increased credit amount, assisting taxpayers in complying with the final regulations.

Regarding commenters' requests for deemed compliance or a rebuttable presumption of compliance, the final regulations do not adopt these comments. Tax jurisprudence requires taxpayers claiming a tax credit to demonstrate that they have met the statutory requirements and can substantiate their claim. The final regulations provide that the penalties do

not apply if a taxpayer uses a qualifying project labor agreement and makes the required correction payments before filing a return claiming the credit. The Treasury Department and the IRS have determined that other safe harbors for PLAs or an exemption from a finding of intentional disregard with respect to correction payments would not strengthen compliance and understand this approach to strike the appropriate balance between recognizing PLA benefits for improving compliance with the PWA requirements and maintaining long-standing tax principles.

As the Treasury Department and the IRS noted in the preamble to the Proposed Regulations, pre-hire project labor agreements may be used by a taxpayer to incentivize stronger labor standards and worker protections on a construction project, and having a PLA in place may also help ensure compliance with PWA requirements for claiming the increased credit amount. Accordingly, the IRS would take into account on examination whether a taxpayer has a qualifying project labor agreement in place and would consider books and records substantiating that a qualifying project labor agreement is being complied with as an indication of compliance with the PWA requirements. For example, records that would support substantiating PWA compliance could include attestations by all counterparties that a taxpayer is in compliance with the terms of the qualifying project labor agreement, including the provisions requiring the payment of prevailing wages and the provisions for referring and using qualified apprentices consistent with section 45(b)(8)(A) through (C) and guidance issued thereunder.

Several commenters suggested additions or revisions to the proposed definition of a qualifying project labor agreement and requested clarifications. For instance, a commenter suggested clarifying that proposed § 1.45–7(c)(6)(ii) applies to both base penalty amounts and any enhanced penalty due to intentional disregard. Similarly, commenters requested clarifying the impact of using a PLA on any required correction payments. Commenters also asked for the final PWA rules to clarify that the agreed-upon wages under a PLA are prevailing wages for the purposes of PWA requirements. At least one commenter asked whether agreed-upon wages under a PLA or a collective bargaining agreement could be treated as the prevailing wage for PWA purposes. Another commenter explained that generally, under a PLA, the taxpayer must pay the wage rates negotiated with the union, which are

often higher than the prevailing wage rates set forth in DOL wage determinations, but under the Proposed Regulations, taxpayers must pay the prevailing wage rate, even if that is lower. Another commenter stated that asking contractors to comply with prevailing wage rates, which may be based on union work rates contained in collective bargaining agreements not publicly available, could add risk for contractors and reduce competition, especially from small businesses.

Additional commenters requested permitting taxpayers to satisfy the Apprenticeship Requirements in the case of a PLA that includes a preference to use qualified apprentices, even if the PLA does not require compliance with all the Apprenticeship Requirements under section 45(b)(8). A commenter asserted that the criteria that the PLA must contain provisions for referring and using qualified apprentices consistent with section 45(b)(8)(A) through (C) and guidance issued thereunder was circular and did not align with PLAs generally. The commenter explained that the requirement that the PLA incorporate the IRA apprenticeship rules undercuts the PLA exception and makes it superfluous. An additional commenter suggested clarifying that a PLA for PWA purposes should allow taxpayers to use both union and non-union registered apprenticeship programs. A commenter also suggested revising the definition of a PLA to include a requirement for referring and using qualified journeyworkers. Similarly, a commenter asked whether a taxpayer may use the journeyworker-to-apprentice ratio under a PLA or a collective bargaining agreement for PWA purposes.

Some commenters requested that the final regulations provide that PLA provisions regarding hiring union workers be optional and that exceptions be explicitly provided for circumstances in which union labor is not available. Commenters suggested that the final regulations should permit contractors who sign a PLA to use their own work rules independent of union collective bargaining agreements. One commenter stated that PLAs must not require payment into union benefit funds as long as contractors have bona fide benefits and are satisfying DBA standards. Similarly, a commenter recommended that the final regulations provide that PLAs can only require the payment of union dues and fringe benefits for the duration of the contract.

A commenter requested that the final regulations adopt the definition for a qualifying project labor organization, largely based in Executive Order 14063

(Use of Project Labor Agreements for Federal Construction Projects), and permit contractors and subcontractors to compete for contracts and subcontracts regardless of whether they are a party to a collective bargaining agreement. The commenter also suggested revising the definition of labor organizations to require some affiliation with a registered apprenticeship program.

A commenter recommended incentivizing taxpayers using a PLA to comply with all of the PLA's provisions, not just PWA-related provisions. The commenter stated that a subset of PLAs (known as community workforce agreements) include provisions beyond the elements defined in the Proposed Regulations. Additionally, a commenter recommended requiring service maintenance workers, like custodians, be included and covered under PLAs used for PWA purposes.

Further, a commenter suggested that recordkeeping related to PLAs be limited to producing a valid PLA covering all laborers and mechanics at the site of work. The commenter also stated that it would be helpful to clarify the role of collective bargaining agreements and a master agreement, as well as the eligible status, if any, of PLAs entered and covering periods before the publication of the proposed rules in the **Federal Register**. The commenter also requested guidance concerning whether the PLA exception still applies if some, but not all, contractors are able to meet the PLA requirements.

Additionally, a commenter suggested that the PWA rules align the criteria for PLAs with the provisions of commonly used PLA templates or that the final regulations adopt a new template. The commenter stated that the proposed rules presented six criteria for qualifying PLAs, but many widely used PLA templates do not meet all six criteria.

The Treasury Department and the IRS agree with the comment to clarify that proposed § 1.45–7(c)(6)(ii) applies to both the \$5,000 penalty and the \$10,000 enhanced penalty (for the Prevailing Wage Requirements) and proposed § 1.45–8(e)(2)(v) applies to both the \$50 penalty and the \$500 enhanced penalty (for the Apprenticeship Requirements) due to intentional disregard. Under the Proposed Regulations, the penalty payment requirement would not have applied with respect to a laborer or mechanic employed under a qualifying project labor agreement if any correction payment owed to the laborer or mechanic is paid on or before a return is filed claiming an increased credit amount. The proposed rule was

intended to apply to both penalty amounts and requires the taxpayer to make any correction payment owed to any laborer or mechanic on or before the date on which the increased credit amount is claimed. The final regulations provide this clarification with respect to both the Prevailing Wage Requirements and the Apprenticeship Requirements.

The proposed definition of qualifying project labor agreement contains six requirements, including that it must contain provisions to pay prevailing wages. The Treasury Department and the IRS agree with commenters that the definition of the term prevailing wages, for the purposes of a qualifying project labor agreement, requires clarification. The final regulations clarify the definition of qualifying project labor agreement to provide that it must contain provisions to pay wages at rates not less than the prevailing wage rates in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. This clarification aligns with the statutory requirements regarding prevailing wage rates and maintains a clear standard for taxpayers and tax administration. Commenters raised that PLAs often require the payment of wages higher than prevailing wages under the DBA. A qualifying project labor agreement may require the payment of wages at rates that are higher than the wage rates that are required by section 45(b)(7)(A).

The proposed definition of qualifying project labor agreement also would have provided that it must contain provisions for referring and using qualified apprentices consistent with section 45(b)(8)(A) through (C) and guidance issued thereunder. The statute defines qualified apprentice and provides the Apprenticeship Requirements. Accordingly, the final regulations do not adopt comments to modify the Apprenticeship Requirements for a qualifying project labor agreement.

Regarding additions to the proposed definition of qualifying project labor agreement, the Treasury Department and the IRS considered these comments and have not adopted these comments in the final regulations. Specific requirements or contractual language in a PLA may arbitrarily exclude many PLAs from the proposed definition of a qualifying project labor agreement for reasons unrelated to ensuring compliance with the PWA requirements. A PLA is a negotiated contract and parties must have the appropriate flexibility to negotiate provisions. Nothing in the final regulations precludes parties from negotiating additional local hire, equity, or community engagement provisions in

a PLA. Since each PLA is negotiated in response to unique project needs and labor market conditions, the Treasury Department and the IRS do not adopt the comment to require a PLA template.

Specific to the nuclear industry, a few commenters proposed that PLA provisions in PWA rules be expanded to include collective bargaining agreements negotiated by nuclear operators and unions covering their direct employees. A commenter suggested also recognizing that such collective bargaining agreements establish the prevailing wages for their unique classification of nuclear employees that perform alterations or repairs. The commenter stated that there are significant differences in the collective bargaining and benefit practices between the construction and nuclear industries. A few commenters suggested amending the rules to permit wages paid pursuant to collective bargaining agreements to qualify as payment of prevailing wages under section 45U(d)(2). One commenter stated that at a minimum, wages paid pursuant to already-existing collective bargaining agreements should be accepted as payment of prevailing wages. Similarly, solely for purposes of section 45U, one commenter requested that wages and benefits paid to non-unionized direct employees be accepted as payment of prevailing wages, if the sum is equal to the collectively-bargained wages and benefits paid to geographically proximate direct employees of a qualified nuclear facility. The commenter also suggested that provisions regarding PLAs in the Proposed Regulations be revised to include taxpayers that have a collective bargaining agreement covering their own employees that perform alteration and repair on facilities eligible for the section 45U credit. The commenter also suggested that existing collective bargaining agreements be deemed to satisfy section 45U(d)(2)(A). One commenter requested that wages and benefits paid pursuant to a collective bargaining agreement negotiated between a taxpayer and a union recognized as the workers' bargaining representative by the National Labor Relations Board, be deemed to comply with prevailing wage rules under section 45U.

A commenter requested a prevailing wage safe harbor for section 45U to recognize the unique characteristics of nuclear power facilities. Another commenter requested permitting, solely for purposes of section 45U, qualified nuclear power facilities that do not directly employ collectively-bargained laborers and mechanics to benchmark

themselves against other similar qualified nuclear power facilities that do directly employ collectively-bargained laborers and mechanics for purposes of determining whether the facility is deemed to pay prevailing wages to its directly employed employees. The commenter stated that even if not unionized, a nuclear operator's craft employees perform the same work under the same conditions as unionized employees and receive generally equivalent wages, participate in the same employer-sponsored benefit plans, and receive benefits equivalent to if not identical to unionized employees.

The Treasury Department and the IRS recognize the nuclear power industry's unique circumstances and that nuclear operators cannot enter into qualifying project labor agreements as they would have been defined under the Proposed Regulations. The section 45U credit has Prevailing Wage Requirements for alteration or repair work of a qualified nuclear power facility, but not during construction. For taxpayers seeking the section 45U credit, a collective bargaining agreement provides workers conducting an alteration or repair the same assurances of up-front compliance that a PLA would, including union oversight and private enforcement. A taxpayer that has a collective bargaining agreement for a qualified nuclear facility that meets minimum requirements analogous to the minimum requirements for a qualifying project labor agreement should also benefit from the rule that penalties do not apply if any correction payment owed to a laborer or mechanic is paid before the increased credit amount is claimed. In response to the comments, the final regulations modify the definition of qualifying project labor agreement for section 45U. For purposes of section 45U, in order to be a qualifying project labor agreement, such agreement must, at a minimum: (i) be a collective bargaining agreement with a one or more labor organizations (as defined in 29 U.S.C. 152(5)) of which employees of the qualified nuclear power facility are members and such agreement establishes the terms and conditions of employment at the qualified nuclear power facility; (ii) contain guarantees against strikes, lockouts, and similar job disruptions; (iii) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the collective bargaining agreement; and (iv) contain provisions to pay wages at rates not less than the prevailing wages in accordance with subchapter IV of chapter 31 of title 40 of the United States Code.

VI. Applicable Scope of the PWA Requirements

Section 45(b)(7)(A) provides that with respect to any qualified facility, the taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in "the construction of such facility" and for the 10-year period after the facility is placed in service, "the alteration or repair of such facility" are paid wages at rates not less than the applicable prevailing wage rates. Under section 45(b)(7)(A)(ii), the prevailing wage rates that are required to be paid with respect to such construction, alteration, or repair are determined by reference to the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located.

Section 45(b)(8) sets forth the Apprenticeship Requirements that apply "with respect to the construction of any qualified facility." Under the Labor Hours Requirement, section 45(b)(8)(A)(i) provides that taxpayers must ensure "with respect to the construction of any qualified facility" that the applicable percentage of the total labor hours is performed by qualified apprentices. Under the Participation Requirement, section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals "to perform construction, alteration, or repair work with respect to the construction of a qualified facility" must employ one or more qualified apprentices.

The Proposed Regulations would have defined the scope of taxpayers' obligation to comply with the PWA requirements consistent with this statutory language. Under the Proposed Regulations, taxpayers would have been required to comply generally with respect to the construction of a qualified facility. The Proposed Regulations did not define the meaning of construction of a qualified facility for purposes of either the Prevailing Wage Requirements or the Apprenticeship Requirements.

Proposed § 1.45–7(d)(2)(i) would have defined "construction, alteration, or repair" to mean construction, prosecution, completion, or repair as defined in 29 CFR 5.2. Under 29 CFR 5.2, construction, prosecution, completion, or repair is defined expansively to include "all types of work" done on a particular building or work at the site of the work, as defined in 29 CFR 5.2, by laborers and mechanics employed by a contractor or subcontractor. This work includes

altering, remodeling, installing of items fabricated offsite; painting and decorating; manufacturing or furnishing of materials, articles, and supplies or equipment on the site of the work; and certain demolition or removal activities.

Under the Proposed Regulations, the scope of the requirement to pay wages at rates not less than the prevailing rates would be clarified by the "site of the work" definition under the DBA. Under the DBA, the requirement to pay prevailing wages is limited by statute to work performed "directly on the site of the work."²³ Under the DBA, secondary construction sites are considered part of the site of the work if a significant portion of a building or work is constructed at the secondary site for specific use in the designated building or work and the site either was established specifically for the performance of the covered contract or project or dedicated exclusively, or nearly so, to the covered contract or project for a specific period of time. By comparison, section 45(b)(7)(A)(i) and (ii) requires the payment of prevailing wages generally in the construction of a qualified facility and the alteration or repair of such facility. As explained in the preamble to the Proposed Regulations, the language of section 45(b)(7)(A) could be, but does not need to be, interpreted to support an expansive reading of construction such that all construction of a qualified facility, wherever located and however small, would be subject to the Prevailing Wage Requirements, resulting in a significantly broader scope under section 45(b)(7) than under the DBA. The Proposed Regulations would have taken a less expansive reading and applied the scope of the Prevailing Wage Requirements to the site of the work, consistent with the DBA rules.

The Treasury Department and the IRS understood the DBA approach to the site of the work as providing useful guidance for balancing the requirements to pay wages at rates not less than prevailing rates with respect to the construction of a qualified facility and existing construction practices in cases in which some construction activities related to a facility may occur in multiple locations. This approach is also consistent with the principle outlined in Section I.A. of this Summary of Comments and Explanation of Revisions to incorporate the DBA requirements that are relevant for claiming the increased credit amount and consistent with sound tax administration. The Proposed Regulations would have largely adopted

²³ 40 U.S.C. 3142(c)(1).

the DBA approach (including rules relating to secondary sites) for purposes of defining the scope of the Prevailing Wage Requirements in proposed § 1.45–7(d)(6). Under proposed § 1.45–7(d)(6), taxpayers would have been subject to the requirement to ensure that laborers and mechanics are paid wages at rates not less than prevailing wage rates with respect to the construction, alteration, or repair at the locality in which the facility is located, which is defined to include any secondary sites where a significant portion of the construction, alteration, or repair of the facility occurs, provided that the secondary site either was established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the facility.

Many commenters requested clarification of how the definition and the site of the work DBA-concept applies across the various Code sections for purposes of determining what work performed in the construction, alteration, or repair of a qualified facility is subject to the Prevailing Wage Requirements. Commenters also emphasized that the site of work definition must reflect the expanded realities of modern construction practices, under which a large and growing percentage of construction, alteration, and repair work is performed offsite through either prefabrication, modularization, or both. A commenter recommended that the site of work definition account for recent technological developments in which the COVID–19 pandemic magnified the need to build spaces that can be rapidly adjusted. A commenter stated that a number of legal challenges to newly added provisions to the regulations under the DBA are expected to be filed, creating ambiguity and a lack of reliability. Commenters also suggested providing specific examples relevant to clean energy projects.

Commenters requested that the site of work for PWA purposes no longer incorporate the DOL definition, based on the DBA. Commenters opined that site of the work for PWA purposes should not be based on the scope of the DBA and should not extend to offsite or secondary construction sites, including manufacturing sites, access roads, substations, buildings, and similar property. Commenters argued that incorporating the DOL definition of site of the work leads to an overly broad application of the PWA requirements to such activities as offsite manufacturing facilities, dedicated production lines, or modular facilities that service multiple projects but that may service a single large project for an extended period of

time—which is not uncommon in the clean energy industry. Commenters also sought guidance concerning the treatment of property such as access roads and substations that may not be eligible property associated with a qualified facility resulting in a scope of the PWA requirements reaching beyond the qualified facility that is eligible for the increased credit amount. One commenter stated that the incorporation of the site of work may subject some taxpayers to different enforcement schemes because the projects may be subject to State or local prevailing wage laws.

Commenters also suggested that if the DBA approach is adopted in the final rule, that any discussion of secondary manufacturing facilities distinguish with examples between genuine offsite manufacturing activities and those that the newly expanded DBA definition would include. Commenters requested that the Prevailing Wage Requirements not apply to manufacturing facilities, dedicated production lines, prefabrication facilities, laydown yards, or “mod-yard” locations that generally service multiple projects and customers. A commenter requested that the final regulations clarify that structures established prior to the start of construction of the qualified facility are not covered by the phrase “site of the work” irrespective of their adjacency or dedication to that site. The commenter also suggested that adjacent or virtually adjacent locations should not be covered by the PWA requirements if they exceed a 2-mile perimeter.

In contrast, other commenters urged the Treasury Department and the IRS to use the DBA site of work definition for the PWA requirements, including secondary sites that are established specifically for the performance of the covered contract or project or dedicated exclusively, or nearly so, to the covered contract or project for a specific period of time. These commenters emphasized the lack of statutory language in the IRA limiting the application of prevailing wage rules based on where work in furtherance of the project is performed and also suggested defining site of work to cover all locations where construction of a covered project is performed. Another commenter claimed that Congress deliberately chose to draft section 45(b)(7)(A) in broader terms than the DBA and recommended that the final regulations apply to all construction sites where integral components of the facility are constructed and dedicated support sites. Commenters recommended that the IRS follow DBA court decisions and mirror the considerations of DBA regulations.

The Treasury Department and the IRS agree with commenters that additional clarity is warranted with respect to defining the scope of the PWA requirements. The Prevailing Wage Requirements apply with respect to the construction of a facility and with respect to the alteration or repair of a facility. The Apprenticeship Requirements apply with respect to construction of a facility. While the terms construction, alteration, and repair draw meaning from the DBA, Congress did not qualify the scope of such activities by the site of the work rule found explicitly in the DBA in defining the scope of the PWA requirements under the IRA. Instead, section 45(b)(7) and (8) limit the scope of construction, alteration, or repair to those activities occurring with respect to a qualified facility. The term qualified facility (as described in section 45 and guidance thereunder) has specific meaning for tax purposes.²⁴

The final regulations clarify that the PWA requirements apply with respect to a qualified facility within the meaning of section 45. The Treasury Department and the IRS recognize that only a portion of a construction project may be used to produce energy covered by the IRA tax credits. Under the general rule provided for in the final regulations, the PWA requirements apply to the portion of the activity that is creditable or deductible per the Code under the respective underlying section.²⁵

²⁴ See, e.g., Rev. Rul. 94–31, 1994–1 C.B. 16.

²⁵ Accordingly, as applicable, the PWA requirements apply under section 30C with respect to a qualified alternative fuel vehicle refueling project described in section 30C(g)(1)(B) (consisting of one or more qualified properties within the meaning of section 30C(c) that are part of a single project); under section 45L with respect to a qualifying residence described in section 45L(a)(2)(B) (that meets the requirements of section 45L(c)(1)(A) or (B), as applicable); under section 45Q, with respect to a qualified facility and any carbon capture equipment placed in service at that facility within the meaning of section 45Q(d); under section 45U with respect to a qualified nuclear power facility within the meaning of section 45U(b); under section 45V with respect to a qualified clean hydrogen production facility within the meaning of section 45V(c)(3); under section 45Y with respect to a qualified facility within the meaning of section 45Y(b); under section 45Z, with respect to a qualified facility within the meaning of section 45Z(d)(4) producing transportation fuel (as defined in section 45Z(d)(5)) or sustainable aviation fuel (as defined in section 45Z(a)(3)(B)); under section 48C, with respect to a qualified investment (as defined in section 48C(b)) in a qualifying advanced energy project within the meaning of section 48C(c)(1)(A); and under section 179D, with respect to energy efficient commercial building property within the meaning of section 179D(c)(1), and energy efficient building retrofit property pursuant to a qualified retrofit within the meaning of section 179(f); and in each case including any

Continued

As discussed elsewhere in this preamble, the Treasury Department and the IRS have incorporated DBA rules if relevant and helpful for tax administration. Despite the differing statutory language with respect to scope, the DOL approach to site of the work under the DBA regulations is instructive for application of the PWA requirements with respect to activities that may occur at locations other than the location of the facility. Accordingly, the final regulations continue to use the DBA concept of site of the work with respect to secondary sites to define the scope of the PWA requirements for work that occurs at secondary locations.

The Treasury Department and the IRS also agree with the concerns raised by the commenters on how the secondary site rule could impact manufacturing activities that occur at offsite locations and are performed by unrelated parties. The final regulations clarify that adoption of the site of the work concept is designed to define the scope of the PWA requirements and prevent an application of the rules that would result in all work on a facility, wherever performed and however small, being subject to the requirements. Under the final regulation, unrelated third-party manufacturers who produce materials, supplies, equipment, and prefabricated components for multiple customers or the general public would not be subject to the PWA requirements.

VII. Prevailing Wage Requirements

A. In General

Section 45(b)(7)(A)(i) requires that with respect to a qualified facility, taxpayers who are seeking an increased credit amount ensure that laborers and mechanics employed by the taxpayer, or any contractor or subcontractor in the construction of such facility are paid wages at rates not less than the prevailing rates determined by the DOL in accordance with the DBA. Section 45(b)(7)(A)(ii) further requires that prevailing wages are paid with respect to alteration or repair of a qualified facility for any portion of a taxable year that is within the 10-year period beginning on the date the qualified facility was placed in service. Proposed § 1.45–7(a) generally would have provided that a taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6)(B)(iii) with respect to any qualified facility must satisfy the requirements of section 45(b)(7) and proposed § 1.45–7. Proposed § 1.45–

7(b)(1) would have provided that a taxpayer needs to ensure that the wages paid to laborers and mechanics employed by the taxpayer, contractor, or subcontractor in the construction, alteration, or repair of the facility must be not less than the prevailing rates in the geographic area in which such facility is located. Proposed § 1.45–7(b)(6) would have provided that all laborers and mechanics working on a qualified facility must be paid in the time and manner consistent with the regular payroll practices of the taxpayer, contractor, or subcontractor.

A few commenters requested that the final regulations require taxpayers, contractors, and subcontractors to adopt weekly payroll practices, as is required for DBA-covered contracts. The commenters stated that requiring weekly payroll would deter fraud and enable taxpayers to ensure that contractors and subcontractors comply with PWA requirements. Many other commenters supported the payment of prevailing wages consistent with the taxpayer's regular payroll practices. The commenters supported the flexibility of the proposed rule and stated that a weekly payroll requirement would not assist the IRS in administering the PWA requirements.

Section 45(b)(7) requires that laborers and mechanics be paid wages at rates not less than the prevailing rates; there is no statutory requirement that laborers and mechanics must be paid on a weekly basis. As several commenters stated, taxpayers, contractors, and subcontractors should have the flexibility to pay their workers in accordance with their ordinary payroll schedules. For these reasons, these final regulations adopt the proposed rule requiring payment in the time and manner consistent with the regular payroll practices without change.

A commenter requested that the final regulations provide an exception for effective compliance with the Prevailing Wage Requirements. The limited penalty waiver in § 1.45–7(c)(6) and described in Section VII.D.4. of this Summary of Comments and Explanation of Revisions provides sufficient relief for inadvertent, minor errors. Another commenter suggested clarifying whether a taxpayer would be deemed to satisfy the Prevailing Wage Requirements for a given year after a facility is placed in service if neither alterations nor repairs were performed during that year. The final regulations clarify that after a facility is placed in service, taxpayers are only required to meet the Prevailing Wage Requirements with respect to alterations and repairs if alterations or repairs are actually performed during

the relevant period.²⁶ The final regulations also provide that if there is no alteration or repair that occurs during the relevant year, the taxpayer is deemed to satisfy the Prevailing Wage Requirements with respect to that year.

Commenters asked that the final regulations clarify whether the applicable prevailing wage rate is based on where the project is being constructed or where the contractor is performing their work. Another commenter stated that in most cases the wages paid are based on the local market where the contractor or subcontractor obtains their labor. Section 45(b)(7)(A) provides that the prevailing wage rate is based on the locality of the facility that is being constructed. The Proposed Regulations similarly would have provided that the wage rates must be not less than the prevailing rates in the geographic area in which such facility is located. The final regulations continue to use the DBA concept of site of the work to address construction of a qualified facility that occurs at one or more secondary locations. The applicable prevailing wage rate that must be paid to laborers and mechanics is determined by the location of the work performed, which may be the location of the qualified facility or any secondary locations.

The Proposed Regulations would have provided a special rule for qualified facilities located offshore so taxpayers would not need to request a supplemental wage determination for offshore facilities. Under the Proposed Regulations, in lieu of requesting a supplemental wage determination for a facility located in an offshore area within the outer continental shelf of the United States, a taxpayer, contractor, or subcontractor would be permitted to rely on the general wage determination for the relevant category of construction that is applicable in the geographic area closest to the area in which the qualified facility will be located. To the extent that the PWA requirements apply to onshore activities related to an offshore wind facility, one commenter suggested clarifying that the locality in which such onshore activities occur, and not where the offshore wind facility is located, would determine prevailing wage rates for those activities. A commenter expressed their support for permitting offshore facilities to use the general wage determination applicable

²⁶ This rule does not apply with respect to sections 30C, 45L, 48C, and 179D as those Code sections do not include a continuing obligation for the payment of prevailing wages with respect to any alterations or repairs that occur after the placed in service date.

to the closest onshore area to the facility. The proposed rule is adopted without change. Onshore activities that are also considered construction of a facility within the scope of the PWA requirements must pay wages at rates not less than the applicable prevailing rates for the location of the work performed.

B. Determining the Applicable Prevailing Wage Rate

1. General Wage Determinations

Section 45(b)(7)(A) requires that with respect to a qualified facility, taxpayers who are seeking an increased credit amount ensure that laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, in the construction, alteration, or repair of such facility are paid wages at rates not less than the prevailing rates as most recently determined by the DBA. As stated in the preamble to the Proposed Regulations, prevailing wage rates are those determined to be prevailing for laborers and mechanics for the various classifications of work performed with respect to a specified type of construction in a geographic area. Under the Proposed Regulations, prevailing wage rates would be determined by the DOL in accordance with the DBA if they are issued and published by the DOL as a general wage determination or if issued to a taxpayer as part of a supplemental wage determination or pursuant to a request for a wage rate for an additional classification.

With respect to the proper timing of a wage determination, proposed § 1.45–7(b)(5) would have provided that the applicable prevailing wage rates on a general wage determination are those in effect at the time construction, alteration, or repair of the facility begins, and generally remain valid for the duration of the work performed with respect to the construction, alteration, or repair of the facility by the taxpayer, contractor, or subcontractor. Taxpayers who perform any alteration or repair of a facility after the facility is placed in service would have been required to use the applicable wage determination in effect at the time the alteration or repair work begins.

Commenters suggested aligning the timing of wage determinations with the DOL regulations under the DBA, including updates to the DBA regulations released in August of 2023, to minimize taxpayer confusion. Several commenters requested that the final regulations provide that prevailing wage rates be established for the entire project when construction contracts are

executed, not when construction begins, consistent with the DBA. Commenters emphasized that prevailing wage determinations are an important factor in determining the cost of labor and that project costs need to be known ahead of time to accurately bid on contracts. Commenters asserted that waiting until construction begins to determine labor costs will lead to financial uncertainty and may discourage participation in construction projects by many contractors because contractors need to know what the prevailing wage obligations are prior to bidding for a project. The commenter stated that the need to apply new wage rates at the start of construction would be disruptive and create unnecessary financial risk for contractors after they have entered into a contract for construction of a facility.

Commenters stated that portions of the Proposed Regulations refer to a contract when referencing the timing of a DBA wage determination, while others refer to a facility, and requested clarification. Another commenter stated that the approach in the Proposed Regulations conflicts with early guidance issued by the DOL regarding IRA prevailing wage compliance.²⁷ A few commenters requested that the final regulations retain the rule that the wage determination be determined at the beginning of construction or revise the rule to provide for the determination of wage rates at the project level to avoid multiple wage rates for the same work. These commenters stated that because there is no analogous prime contract with a Federal agency as under the DBA, connecting the wage determination timing to the execution of a contract could be challenging. Commenters stated that determining prevailing wage rates at the project level would allow for greater consistency between contractors and subcontractors. Another commenter emphasized that each taxpayer, contractor, and subcontractor should be subject to the same applicable wage determination. At least one commenter suggested that the final regulations should permit taxpayers to use wage determinations at the time contracts are executed or when construction begins.

The DBA framework is predicated on a Federal contract for the construction of public buildings and public works between the Federal Government and contractors. Under the DBA, every contract to perform construction, alteration, or repair to which the Federal

Government is a party must contain a provision stating the prevailing wage rates to be paid to various classes of laborers and mechanics. The DBA regulations generally provide that the applicable wage rates for a contract are those in effect at the time the prime contract is awarded by the Federal contracting agency.²⁸ By contrast, under the PWA requirements, there is no contracting party directly analogous to the Federal Government. Under the Prevailing Wage Requirements, taxpayers are required to ensure the payment of at least prevailing wages, but they may do so through the execution of multiple contracts and subcontracts or may perform the work with their own employees.

Because of the perceived difficulty in assigning a fixed time to establish the applicable prevailing wage rates based on the execution of contracts, the proposed rules would have provided that the applicable prevailing rates are determined at the beginning of construction. However, the Treasury Department and the IRS understand the need for taxpayers to reduce uncertainty and determine expected labor costs prior to entering into contracts for the construction of a facility. Additionally, the Treasury Department and the IRS agree that the “in accordance with” language in section 45(b)(7) supports drawing from the DBA rules to determine the appropriate timing for establishing the applicable wage rates. Accordingly, the final regulations are revised to provide that the applicable prevailing rates are determined at the time the contract for the construction, alteration, or repair of the facility is executed by the taxpayer (or the taxpayer’s designee, assignee, or agent) and a contractor. The prevailing wage rates at the time such contract is executed apply to all subcontractors of that contractor. In circumstances in which a taxpayer (or the taxpayer’s designee, assignee, or agent) executes separate contracts with more than one contractor, then for each such contract, the applicable prevailing rates with respect to any work performed by the contractor (and all subcontractors of the contractor) are determined at the time the contract is executed by the taxpayer (or the taxpayer’s designee, assignee, or agent) and the contractor. In the absence of a contract, or if a contractor or subcontractor is unable to determine the date of execution of the contract, the

²⁷ U.S. Dept. of Labor, *Davis-Bacon and Related Acts (DBRA) Frequently Asked Questions*, § III.11, <https://www.dol.gov/agencies/whd/government-contracts/construction/fq>.

²⁸ Under 29 CFR 5.2, the term “contract” means any prime contract that is subject wholly or in part to the labor standards provisions of any of the laws referenced by 29 CFR 5.1 and any subcontract of any tier thereunder, let under the prime contract.

final regulations provide that the applicable wage determinations are those in effect at the time construction starts.

These revisions address commenters' practical business concerns regarding costs and financing and provide greater consistency with how the applicable wage rates are established under the DBA. The final regulations address the concern of commenters that various wage rates would apply, or that costs will not be able to be determined up front, because they apply the rate at the time the contract is executed between the taxpayer and a contractor to all subsequent contracts that flow from such contract. Thus, consistent with the DBA, the final regulations allow for more than one wage determination to apply with respect to the construction, alteration, or repair of a facility in cases in which a taxpayer executes separate contracts with more than one contractor, but nonetheless provide certainty for the taxpayer, contractor, and subcontractor with respect to any work performed pursuant to that contract.

The final regulations also adopt a similar framework for alterations or repairs that occur after the facility is placed in service with applicable wage determinations applying when a contract is executed between a taxpayer and contractor for the alteration or repair of a facility, or absent a contract, when the repair or alteration starts. The final regulations also add all contracts for construction, alteration, or repair to the list of records that may be necessary to demonstrate compliance with the applicable Prevailing Wage Requirements.

Under the Proposed Regulations, taxpayers generally would not have been required to update the applicable prevailing wage rates during construction of the facility in the event a new general wage determination was published by the DOL after construction of the facility begins. The preamble to the Proposed Regulations stated that a new wage determination would be required if the contract is changed to include additional, substantial construction, alteration, or repair work not within the scope of work of the original contract, or to require work to be performed for an additional time period not originally obligated, including in the case of an option to extend the term of a contract for the construction, alteration, or repair being exercised. Proposed § 1.45–7(b)(5) mirrored the language in the preamble, but omitted the term substantial from the rule. The Proposed Regulations also would have provided that taxpayers would need to update the applicable

wage rate(s), as necessary, with respect to any alteration or repair of a facility that begins after the facility has been placed in service. Taxpayers would do this by ensuring that wages are paid for such alteration or repair based on the general wage determination in effect when the alteration or repair begins.

Several commenters were concerned about the requirement to update prevailing wage rates during the lifespan of a construction project. Commenters suggested clarifying how to determine when, under the Proposed Regulations, an additional time period not originally obligated has occurred that necessitates obtaining a new wage determination. The commenters stated that the language with respect to an additional time period is ambiguous and could apply to ordinary delays and extensions that are common in construction projects. Commenters requested that the terms substantial and additional be defined, or a *de minimis* value be set, to better clarify the threshold of new work or additional time above which taxpayers would be required to seek a new wage determination.

The commenters recommended inclusion of language from the DBA regulations to clarify that a new wage determination is not required if additional time is given to complete the original commitment or if the additional construction, alteration, and/or repair work as part of the modification is merely incidental. Other commenters recommended the final regulations include a substantiality threshold consistent with DBA regulations. One commenter suggested the final regulations require new wage rates only if there is a cardinal change to a covered project. Another commenter suggested limiting the need for additional wage determinations to increases in the project's budget of at least 30 percent or delays of at least 120 days to the project's expected completion date. One commenter suggested that the wage determination in effect at the beginning of a taxpayer's taxable year be used for all alterations and repairs occurring in the years after a facility is placed in service.

The Treasury Department and the IRS agree that clarifications are needed and that the rules regarding when a new wage determination is required should be consistent with the rules under the DBA. Under the DBA guidance in 29 CFR 1.6, if there is additional, substantial construction, alteration, and/or repair work not within the scope of work of the original contract or order, or changes to require the contractor to perform work for an additional time

period not originally obligated, including cases in which an option to extend the term of a contract is exercised, the contracting agency must include the most recent revision of any wage determination(s) at the time the contract is changed or the option is exercised. This does not apply if the contractor is simply given additional time to complete its original commitment or if the additional construction, alteration, and/or repair work in the modification is merely incidental. The DBA regulations also provide rules with respect to contracts for construction, alteration, or repair work over a period of time that is not tied to the completion of any specific work, such as indefinite operations and maintenance or repair contracts. The DBA regulations require contractors who are parties to these types of contracts to update the applicable wage rates for such contracts on an annual basis. The revised wage determination then applies to any alteration or repair work that begins under such a contract during the 12 months following the update until such construction work is completed, even if the completion of that work extends beyond the twelve-month period.

Accordingly, the final regulations update the proposed rule to include the substantiality requirement discussed in the preamble to the Proposed Regulations, and further clarify that the requirement to update the wage determination does not apply if the contractor is given more time to complete its original commitment or if the additional work is merely incidental. The final regulations also update the proposed rule to provide that if a taxpayer enters into a contract for alteration or repair work over an indefinite period of time that is not tied to the completion of any specific work, the applicable wage rates must be updated on an annual basis.

2. Applicable Prevailing Wage Rate for General Wage Determinations

The Proposed Regulations would have provided that a general wage determination would be one issued and published by the DOL that includes a list of wage and bona fide fringe benefit rates determined to be prevailing for laborers and mechanics for the various classifications of work performed with respect to a specified type of construction in a geographic area. As stated in the preamble to the Proposed Regulations, generally, the DOL conducts surveys to determine the prevailing rate based on wage rate data submitted by contractors, contractors' associations, labor organizations, public

officials, and other interested parties. In general, the Proposed Regulations would have provided that to determine the applicable prevailing wage rates, taxpayers would need to use the general wage determination(s) published by the DOL under the DBA on a DOL approved website. The current DOL approved website for publishing general wage determinations <https://www.sam.gov>.

Section 45(b)(7)(A) requires that taxpayers ensure the payment of prevailing wages at rates not less than the prevailing rates determined in accordance with the DBA. The Proposed Regulations would have largely incorporated the definition of wages from 29 CFR 5.2 for the Prevailing Wage Requirements. Under the Proposed Regulations, wages would be defined as the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The Proposed Regulations would have also incorporated by reference the rules set forth in 29 CFR 5.25 through 5.33 with respect to the costs for bona fide fringe benefits that may be credited for purposes of the payment of wages. The Proposed Regulations would have prescribed rules with respect to the payment of wages including that the payment of wages be made without deduction (except such payroll deductions as are required by the law or permitted by regulations issued by the Secretary of Labor) and must consist of the full amount of wages (including bona fide fringe benefits or cash equivalents thereof). Under the Proposed Regulations, whether amounts are wages for purposes of the Prevailing Wage Requirements would not be relevant in determining whether amounts are wages or compensation for other Federal tax purposes.

One commenter suggested that prevailing wage rates established by the DOL fail to take into account actual compensation to workers, including fringe benefits, in all cases. The commenter suggested that to calculate prevailing wage amounts, an employer would not be able to take credit for the cost to set up and offer medical insurance if an employee opts out of medical coverage. The commenter also stated that taxpayers who enter into a

collective bargaining agreement may be disadvantaged, because the agreement could set the wages and benefits below the prevailing wage amounts for covered employees. The commenter suggested establishing a safe harbor whereby a taxpayer would be deemed to satisfy Prevailing Wage Requirements if a substantial number—defined as 90 percent—of their employees are paid prevailing wages.

This comment appears to misstate the DBA requirements, and to the extent the comment addresses the determination of prevailing wage rates for purposes of the DBA, the comment is outside the scope of these regulations. The Proposed Regulations would have largely incorporated the definition of wages from 29 CFR 5.2 for the Prevailing Wage Requirements. Under 29 CFR 5.2 wages include any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The Proposed Regulations would have therefore included in the payment of prevailing wages, the rate of costs to an employer to provide bona fide fringe benefits. Additionally, the statute requires the payment of prevailing wages in accordance with the DBA and does not allow lower wage rates because there is a collective bargaining agreement or if 90 percent of workers have been paid the applicable wage rates. Accordingly, the changes suggested by the commenter are not incorporated.

A commenter stated that the Proposed Regulations impose no obligation on taxpayers to confirm that fringe benefit contributions by contractors are made to bona fide entities. The commenter suggested requiring taxpayers to: (i) provide notice of an enforceable commitment to provide bona fide fringe benefits, and (ii) confirm that fringe benefit contributions made on behalf of laborers and mechanics by contractors and subcontractors are made to a bona fide fringe benefit fund, plan, or program. Another commenter request that the final regulations specifically allow for the payment of non-required forms of compensation, such as paying for a portion of health insurance, to make up for any wage payments that are below the prevailing wage rate.

Consistent with the DBA, the final regulations clarify that a taxpayer may

discharge its wage obligations for the payment of prevailing wages by paying the full amount in cash, by making payments to a bona fide fringe benefit provider or incurring costs for bona fide fringe benefits, or by a combination thereof. As discussed previously, wages are defined to include contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program. Failures by contractors or subcontractors to make payments to bona fide plans or programs may result in laborers and mechanics being paid wages at rates less than the required prevailing wage rates. However, there is flexibility because the taxpayer, contractor, or subcontractor can pay the entire prevailing wage amount through the basic hourly rate, including the cash equivalent of fringe benefits. They are permitted, but not required, to provide bona fide fringe benefits. If they do provide bona fide fringe benefits, the cost of those benefits is included in the prevailing wage rate. It is ultimately the taxpayer's responsibility to ensure compliance with the Prevailing Wage Requirements. These final regulations do not require any specific method for the taxpayer to ensure compliance; however, taxpayers must maintain records reflecting that compliance.

Other commenters opined that the DOL prevailing wage rates are based on unreliable methodologies and are flawed and inaccurate. A commenter stated that existing prevailing wage laws have an inflationary impact on construction costs. Similarly, a commenter suggested that the rates used for the wages are generally drawn from the nearest urban center and don't necessarily reflect local market conditions. A commenter expressed that the prevailing wage rates published by the DOL are subject to change and can vary greatly by location, category, and job type. The commenter suggested the uncertainty of prevailing wage rates will inhibit investment in clean energy projects and raise the cost and risk of such projects.

Under section 45(b)(7)(A), the increased credit amount provided by section 45(b)(6) is available with respect to a qualified facility if a taxpayer ensures that laborers and mechanics are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor in accordance with the DBA. The statute mandates the use of prevailing wage rates determined by the DOL. The DOL

wage determination survey process and data sufficiency are outside the scope of these final regulations.

Commenters also stated that union classifications are complex and confusing and that nonunion contractors may struggle to classify certain jobs with descriptions contained in collective bargaining agreements that are not shared publicly. The commenter raised that the DOL has applied union work rules and job descriptions to any classification for which the union rate prevails. A commenter recommended that taxpayers, contractors, and subcontractors should not be penalized for failing to conform to job descriptions that are not published by the DOL and/or the unions whose wage scales are found to be prevailing. The commenter suggested that, at a minimum, no intentional violation penalty should be assessed in the absence of publication of the job descriptions for each trade, which can be readily accomplished by posting hyperlinks to union collective bargaining agreements, or the DOL dictionary of occupation definitions.

Commenters also encouraged the Treasury Department and the IRS to recognize that new clean energy technologies require new labor classifications and suggested providing additional guidance regarding other types of professional workers unique to clean energy that should be considered distinct from laborers or mechanics. Commenters also requested that the DOL FAQs be amended to no longer preemptively declare that clean technology workers will generally be deemed covered and classified under so-called established trades, particularly with regard to solar and wind turbine industries. Commenters stated that standardization and definition regarding multiple labor categories is necessary to avoid protracted delays and confusion. Similarly, a commenter suggested that taxpayers should not be penalized for misclassifications arising from delays in the DOL determinations. Another commenter stated that no clear labor classifications exist for workers directly employed by nuclear power plant operators.

Other commenters recommended implementing the DOL system of trade and craft classifications under the DBA, including updates to the DBA regulations released in August of 2023. A commenter stated that the update contained specific recommendations for prevailing wage classifications, including new definitions of geographic localities and broader definitions of construction to better reflect work on clean energy projects.

The Treasury Department and the IRS appreciate commenters' concerns and suggestions regarding emerging technologies and the need for consistency and transparency in the classification process. However, revisions to the DOL regulations and other guidance regarding worker classifications for DBA purposes are outside the scope of these final regulations.

Commenters also requested that the final regulations clarify the types of construction subject to wage determinations. For purposes of determining the applicable general wage determination, the Proposed Regulations would have provided that the types of construction for which wage determinations may be issued include, but are not limited to, building, residential, heavy, and highway, which are the types of construction for which the DOL issues general wage determinations under the DBA.²⁹

A commenter recommended clarifying that the DOL definition and interpretation of the types of construction should control for PWA purposes and that only those types of construction designated by the DOL as of a similar character in the locality should be permitted for IRA projects. Other commenters supported only recognizing the DOL's four major categories of construction.

The language in the Proposed Regulations was intended to align with the types of construction for which the DOL currently issues wage determinations and allow for additional or different classifications should the DOL designate additional classifications in the future. The final regulations clarify that the types of construction are those identified by the DOL and provide the flexibility for the DOL to add to or modify those categories as necessary within the DOL's existing authorities. Any decision by the DOL to add to or modify those categories is outside of the scope of these final regulations.

A commenter requested that the final regulations clarify whether the definition of wages as used in sections 45(b)(7)(A) and 45Q(h)(3) has the same meaning as wages provided by 48 CFR 22.401 and whether such wages should be computed according to 48 CFR 22.406–2. The final regulations do not adopt this comment because section 45(b)(7)(A) requires taxpayers to ensure that wages are paid at rates not less than the prevailing rates in accordance with the DBA and not the Federal

Acquisition Regulations in Title 48 of the Code of Federal Regulations.

One commenter recommended expressly adopting the DBA's "30-percent rule," whereby the prevailing wage rate is defined as the rate paid to the greatest number of laborers or mechanics in the classification on similar projects in the area during the period in question, provided that the wage is paid to at least 30 percent of those employed in the classification. Section 45(b)(7)(A)(ii) requires taxpayers who are seeking an increased credit amount to ensure that laborers and mechanics are paid wages at rates that are not less than the prevailing rates "as most recently determined" by the DOL in accordance with the DBA. The Proposed Regulations would have provided for incorporation of DBA rules for determining prevailing wage rates by defining prevailing wage rates as those rates most recently determined by the DOL. Consistent with section 45(b)(7)(A)(ii), the final regulations retain the rule from the Proposed Regulations; they do not incorporate the comment to expressly adopt the 30-percent rule.

3. Supplemental Wage Determinations and Rates for Additional Classification Requests

The Proposed Regulations would have provided special procedures for the limited circumstances in which a general wage determination does not provide an applicable wage rate(s) for the work to be performed on the facility or if there is no applicable general wage determination. These circumstances would include cases in which no general wage determination has been issued for the geographic area or for the specified type of construction, or in which the DOL has issued a general wage determination for the relevant geographic area and type of construction, but one or more labor classifications necessary for the construction, alteration, or repair work that will be done on the facility is not listed as part of that determination.

The Proposed Regulations would have provided that under these circumstances, a taxpayer, contractor, or subcontractor would need to request a supplemental wage determination or request a prevailing wage rate for an additional classification from the DOL. Under the Proposed Regulations, a taxpayer, contractor, or subcontractor could have also requested a supplemental wage determination if the location of the facility involves work by covered laborers and mechanics that spans more than one contiguous geographic area. The procedures for

²⁹Dep't of Labor, ALL AGENCY MEMORANDUM NO. 130 (March 17, 1978).

requesting a supplemental wage determination or a prevailing wage rate for an additional classification from the DOL were intended to correspond to the provisions under the DBA that allow contracting agencies to seek a project wage determination or a conformance under 29 CFR 1.5(b) and 5.5(a)(1)(iii), respectively.

With respect to supplemental wage determination requests and requests for additional classifications and wage rates, proposed § 1.45–7(b)(3)(ii)(A) would have provided that a taxpayer, contractor, or subcontractor should make such requests no more than 90 days before the beginning of construction, alteration, or repair, as appropriate. While the procedures for requesting a supplemental wage determination or rates for additional classifications would have generally been consistent with DBA rules, there is no similar timing requirement under DBA rules with respect to project wage determinations or conformances that are requested by the contracting agency. The 90-day limitation was proposed to limit requests for hypothetical wage determinations that were not tied to actual construction projects in the final planning stages. According to the DOL, this concern is addressed in the DBA context through the involvement of the contracting agency, but there is no contracting agency involved in the construction of facilities for PWA purposes that would help avoid unnecessary and hypothetical requests.

Commenters generally expressed support of the supplemental wage determination and additional classification process. Commenters stated that the procedures were largely consistent with processes under the DBA and were necessary given the constant transformational nature of the construction industry. One commenter expressed support for the requirement that any requests for additional wage determinations bear a reasonable relationship to the established wage rates, consistent with the DBA rules. The commenter also supported the IRS's recognition that a request for a prevailing wage rate for an additional classification would not be permitted to be used to split, subdivide, or otherwise avoid application of classifications listed in a general wage determination. In addition, commenters supported adopting the DOL test for determining whether to approve a taxpayer or contractor's request to add a missing classification to a DBA wage determination. Some commenters requested that the final regulations expressly adopt the DOL three-part conformance test for adding missing

classifications to wage determinations. Commenters claimed that adopting DOL regulations governing conformance requests would help protect multiskilled occupations from unscrupulous contractors inventing unnecessary subclassifications for the purpose of paying workers less. The commenters also suggested clarifying that the DOL will consider the views of construction workers to be employed in the requested classification and stakeholders, including labor unions in the affected area, with respect to the adequacy of the requested classification and/or proposed wage and fringe benefits rates.

The Treasury Department and the IRS coordinated extensively with the DOL in drafting the supplemental wage determination and additional classification process outlined in the Proposed Regulations. The procedures in proposed § 1.45–7(b)(3) for requesting a supplemental wage determination or a rate for an additional classification from the DOL would have corresponded to the provisions under the DBA that allow contracting agencies to seek a project wage determination or a conformance under 29 CFR 1.5(b) and 5.5(a)(1)(iii), respectively. They would have included certain minor differences from the conformance process to account for the absence of a Federal contracting agency. The comments suggesting that the DOL should alter its underlying process and methodology for determining prevailing wages (both in the DBA and the PWA context) are not adopted. Additionally, changes to DOL procedures regarding the DBA are outside the scope of these final regulations as the DOL administers those DBA provisions.

Several commenters shared concerns with the wage determination process administered by the DOL. One commenter stated that numerous occupations in the clean energy industry are unrepresented in the general wage determinations currently offered by the DOL, such as wind technicians often relied upon for the installation and assembly of onshore and offshore wind turbines. One commenter stated that nuclear power generating facilities are different than other construction projects, including other electric generating facilities, and that the specialized roles performed by employees at nuclear facilities are not always covered by existing DOL classifications. A commenter also asked for guidance on how to categorize specific repairs or alterations of an existing nuclear facility for purposes of DOL general wage determinations. Similarly, commenters recommended providing additional guidance about

multi-category projects, such as who will make the final determination on the classification of a project (for example, building or heavy), and the category a contractor should follow.

Comments requesting additional classifications and additional guidance from the DOL on the application of appropriate classifications are outside the scope of these final regulations. The procedures for requesting a supplemental wage determination or a prevailing wage rate for an additional classification from the DOL continue to apply.

Some commenters were critical of the proposed rule requiring that a taxpayer, contractor, or subcontractor request a supplemental wage determination no more than 90 days before the beginning of construction of a facility. Commenters stated that the 90-day period is too short because of the high importance of the prevailing wage determination on the cost of labor. Similar to general wage determinations, commenters stated that it is necessary to know project costs at the bidding stage, and bidding on contracts to construct a facility takes place far more than 90 days before the beginning of construction, often more than one year prior to construction beginning. Some commenters suggested the time be extended to a year before a bid is due or 24 months before the beginning of construction, asserting that this would provide all potential bidders with sufficient clarity on wage determinations and job classifications in sufficient time to make informed bids on solar and other clean energy projects. The commenter also stated that this would reduce the number of requests to the DOL, which will mitigate the burden on government regulators and allow them to process requests more efficiently.

The Treasury Department and the IRS agree with the comments seeking additional time to request supplemental wage determinations and rates for additional classifications. The commenters persuasively argued that wage determinations issued at or near the beginning of construction are not helpful for taxpayers who will likely seek to enter contracts well in advance of construction starting. Taxpayers and their contractors need certainty regarding the labor costs of a project at the time of entering contracts for work to be performed rather than when construction begins. Moreover, the 90-day period prior to construction starting lacks consistency with the rules under the DBA. The final regulations revise the Proposed Regulations to align the timing of requests for supplemental

wage determinations or rates for additional classification with the contract framework adopted for general wage determinations. The final regulations update when taxpayers must request a supplemental wage determination or rate for additional classification from the DOL to provide greater certainty for taxpayers and better align with the rules under the DBA, while also preventing an influx of hypothetical requests for supplemental wage determinations or additional classifications that would be administratively burdensome to the DOL.

Under the final regulations, requests for supplemental wage determinations cannot be made more than 90 days before the date the contract between the taxpayer (or the taxpayer's designee, assignee, or agent) and a contractor for construction, alteration, or repair of the facility is expected to be executed. The final regulations further prescribe that any supplemental wage determinations are required to be incorporated into the contract between the taxpayer and contractor within 180 days of issuance. The 180-day period for incorporation into a contract provides consistency with the DBA rules under 29 CFR 1.6(a)(3)(i).

Under the final regulations, requests for prevailing wage rates for additional classifications can be made any time after a contract for the construction, alteration, or repair of a facility has been executed between the taxpayer and a contractor. The final regulations balance the need of taxpayers for increased certainty regarding labor costs at or near the time of entering a contract with the need to limit hypothetical requests that are not tied to actual construction projects. The DOL WHD has advised the Treasury Department and the IRS that most taxpayers will likely not need to use the process for requesting a supplemental wage determination or request a rate for an additional classification because of the availability of general wage determinations.

Commenters requested that the final regulations provide that if a response from the DOL for an additional wage rate is not provided within a specific time period, such as 60 days, the prevailing wage rate requirement for that role should no longer apply. Under the Proposed Regulations, the procedures for requesting a prevailing wage rate for an additional classification from the DOL were intended to correspond to the provisions under the DBA that allow contracting agencies to seek a conformance under 29 CFR 5.5(a)(1)(iii). Section 5.5(a)(1)(iii) of the DBA regulations provides that the DOL

will approve, modify, or disapprove any classification action within 30 days of receipt or advise the requesting contracting agency within the 30-day period that additional time is necessary. To retain consistency with the DBA and address the valid taxpayer and contractor concerns regarding cost certainty and preventing unreasonable delays, the final regulations adopt similar language that the DOL will resolve requests for a prevailing wage rate for an additional classification within 30 days of receipt or advise the requester within the 30-day period that additional time is necessary. The final regulations do not, however, adopt the commenters suggestion that a delay in receiving an additional wage rate excepts a taxpayer from the requirement to pay wages at rates not less than the prevailing rates for that role.

An additional commenter recommended that, in instances in which taxpayers receive a supplemental wage determination or a prevailing wage rate for an additional classification, taxpayers be provided a 30-day grace period during which to pay the affected employees the difference between the wage determination and previous wage rates. A commenter also proposed a 30-day grace period following a denial or partial-relief from an appeal with respect to wage determinations generally.

The Treasury Department and the IRS recognize the possibility that the DOL response to a request for a supplemental wage determination or additional classifications may not be issued until after laborers and mechanics have started working on the facility or project. The Proposed Regulations would have provided that the taxpayer would not be considered to have failed to meet the Prevailing Wage Requirements with respect to any mechanics or laborers whose wage rate was subject to the request and who were paid less than the prevailing wage rate before the determination by the DOL if the taxpayer requests the supplemental wage determination or prevailing wage rate for an additional classification before the beginning of construction (or as soon as practicable after the start of construction) and makes a correction payment within 30 days of the determination to each laborer or mechanic equal to the difference between the amount of wages paid to such laborer or mechanic before the determination and the amount of wages required by the Prevailing Wage Requirements to be paid to such laborer or mechanic during such period. This exception is intended to mitigate a rule that would require taxpayers to make

correction and penalty payments for failures to pay a prevailing wage rate that could not be timely determined by the taxpayer. The same considerations do not apply to the request for additional time while an appeal with respect to a wage determination is pending. Therefore, the final regulations adopt the proposed rule without change.

Commenters also requested that the final regulations require consistency between who can request supplemental wage determinations or additional classifications and who can seek reconsideration of such a decision. A commenter stated that proposed § 1.45–7(b)(3)(ii)(A) would have provided that a taxpayer, contractor, or subcontractor request a supplemental wage determination or additional classification and wage rate and after review, the DOL WHD will notify the taxpayer, contractor, or subcontractor as to the supplemental wage determination or the labor classifications and wage rates to be used for the type of work in question in the geographic area in which the facility is located. However, proposed § 1.45–7(b)(4) would have provided that, in connection with seeking a reconsideration of a wage determination, a “taxpayer may seek reconsideration and review by the Administrator of the Wage and Hour Division of a general wage determination, or a determination issued with respect to a request for a supplemental wage determination or additional classification and wage rate.” In contrast, one commenter requested that only taxpayers be permitted to request supplemental wage determinations. Under 29 CFR 1.8(a), any interested party may seek reconsideration of a wage determination.

The final regulations clarify that any supplemental wage determination or rate for additional classification request may be made by the taxpayer, contractor, or subcontractor. With respect to seeking a reconsideration of a general wage determination, or a determination issued with respect to a request for a supplemental wage determination or rate for additional classification request, the final regulations further clarify that the taxpayer, contractor, or subcontractor may seek the reconsideration. Ultimately, the taxpayer must ensure that the PWA requirements are satisfied regardless of whether a contractor or subcontractor requested a supplemental wage determination or requested an additional classification.

4. Applicable Prevailing Wage Rate for Apprentices

With respect to the prevailing wage rates for apprentices, the Proposed Regulations would have adopted 29 CFR 5.5(a)(4)(i), allowing the payment of wages that differ from the applicable prevailing wage rate to apprentices who are participating in a registered apprenticeship program. The Proposed Regulations would have also provided that taxpayers and contractors or subcontractors who employ individuals who are not in a registered apprenticeship program or who employ apprentices in excess of applicable ratios permitted by the registered apprenticeship program would need to pay those individuals the full prevailing wage rate listed for the classification of the work performed in the applicable wage determination.

A commenter recommended increasing the rate of pay for apprentices, given the frequency at which apprentices travel for work. This comment is not adopted as the prevailing rate of pay for work performed by apprentices is determined by the DOL and is outside the scope of these final regulations. Comments concerning employing apprentices in excess of the applicable ratios are discussed in Section VIII.A.2. and employing individuals who are not apprentices because they are not participating in a registered apprenticeship program are discussed in Section VIII.A.5., of this Summary of Comments and Explanation of Revisions.

The Proposed Regulations would have provided a reciprocity rule. Under the proposed reciprocity rule, if the construction is occurring in a geographic area other than the geographic area in which an apprenticeship program is registered, the ratio applicable within the geographic area where the construction is being performed would apply. If there is no applicable ratio for the geographic area of the facility, the ratio specified in the registered apprenticeship program standard would apply.

Commenters requested clarification on the applicable apprentice-to-journeyworker ratio if work is performed outside of the geographic area in which the apprenticeship program typically operates. A few commenters suggested that the final regulations adopt a reciprocity standard that would permit taxpayers to apply either the apprenticeship-to-journeyworker ratio set by the registered apprenticeship program or the State where the construction is being

performed. Another commenter recommended giving taxpayers flexibility to determine the appropriate ratio and wage rates if the taxpayer, contractor, or subcontractor is performing covered work in a geographic area other than that in which the apprenticeship program is registered.

The Treasury Department and the IRS appreciate commenters' requested clarification on the proposed reciprocity rule and work that is performed outside of the geographic area in which the apprenticeship program is registered. The proposed reciprocity rule would have largely followed the rule in 29 CFR 5.5(a)(4)(i)(D) regarding the payment of prevailing wages to apprentices. Based on consultations with the DOL, the Treasury Department and the IRS understand that this rule is intended to apply in cases in which the ratio requirement of the State where the construction occurs is stricter than that of the registered apprenticeship program. The final regulations largely adopt the proposed rule, and also clarify that if more than one apprentice-to-journeyworker ratio could apply because the construction work is occurring in a geographic area where the registered apprenticeship program is not registered, the taxpayer must comply with the apprentice-to-journeyworker ratio set for the geographic area where the construction occurs. Thus, if the geographic area in which the construction is occurring requires a higher number of journeyworkers per apprentices than the ratio required by the registered apprenticeship program, then the taxpayer, contractor, or subcontractor must follow the stricter ratio. The final regulations also adopt the proposed rule that the wage rates (expressed in percentage of the journeyworker hourly rate) applicable in the geographic area in which the construction, alteration, or repair work is performed must be observed.

A commenter requested guidance for determining the apprentice or apprentices that must be paid not less than the full prevailing wage rate for their hours if the daily ratio requirement is not satisfied. The final regulations clarify that the taxpayer, contractor, or subcontractor, as applicable, has the discretion to determine which apprentice(s) must receive the full prevailing wage rate for hours worked if there is a failure to satisfy the Ratio Requirement.

At least one commenter recommended that the final regulations not require taxpayers to pay at least the full prevailing wage rate to apprentices in excess of the applicable ratio. Under

the DBA, any apprentice performing work on the job site in excess of the ratio permitted under the registered program or the ratio applicable to the geographic area of the facility pursuant to 29 CFR 5.5(a)(4)(i) must be paid not less than the full applicable prevailing wage rate on the wage determination for the work actually performed. The Proposed Regulations would have provided that the calculation of the prevailing wage rate for the work of apprentices would be in accordance with the DBA rules. The proposed rule is adopted as final.

A commenter raised that the Proposed Regulations appear to limit the number of apprentices that can be paid the apprenticeship rate to the number of apprenticeships required by the regulation. The commenter stated that limiting the number of apprentices that can be paid the apprenticeship rate to the number of apprentices required by the regulation discourages the use of a larger number of apprentices and would seem to violate the policy objectives of the requirements to use apprentices. On the other hand, a commenter recommended adopting the DOL oversight and quality control standards, including apprentice-to-journeyworker ratios, to help ensure safe training of apprentices.

Apprentice-to-journeyworker ratios prescribe the minimum number of journeyworkers required for each apprentice that is on a job site on a given day to ensure the appropriate training and supervision of apprentices and to maintain workplace safety. The apprentice-to-journeyworker ratio does not impose a cap on the total number of apprentices that can be paid the apprentice rate. For example, a taxpayer may satisfy a 1:1 ratio by hiring one journeyworker and one apprentice or by hiring 20 journeyworkers and 20 apprentices. The prescribed ratio does not restrict the total number of individuals that are hired.

C. Definitions

Commenters suggested clarifying the extent to which the relevant definitions under proposed § 1.45–7(d) for the Prevailing Wage Requirements apply to the proposed § 1.45–8(f) definitions for the Apprenticeship Requirements. The final regulations align the relevant definitions for the Prevailing Wage Requirements in § 1.45–7(d) with the Apprenticeship Requirements in § 1.45–8(g).

1. Laborer and Mechanic

Proposed § 1.45–7(d)(7) would have defined the terms laborer and mechanic consistent with the definition under the

DBA as those individuals whose duties are manual or physical in nature (including those individuals who use tools or who are performing the work of a trade). Under the Proposed Regulations, laborers and mechanics would not have included individuals whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 would not be deemed to be laborers or mechanics. These individuals are generally exempt under the Fair Labor Standards Act and are not laborers or mechanics for purposes of the DBA. Consistent with the DBA, working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties, and who do not meet the criteria for exemption under 29 CFR part 541, also would be considered laborers and mechanics for the time spent conducting laborer and mechanic duties. Under the Proposed Regulations, laborers and mechanics would have included apprentices and helpers. The Treasury Department and the IRS requested comments on the treatment of working forepersons or owners performing the duties of laborers and mechanics under certain circumstances, and other executive or administrative personnel who also perform duties of a manual or physical nature, in the construction, alteration, or repair of a qualified facility.

At least one commenter requested that the Treasury Department and the IRS confirm that the terms laborer and mechanic are defined as under the DBA to include individuals whose duties are manual or physical in nature rather than primarily administrative, executive, or clerical. Commenters also requested that the final regulations exclude certain owners and specialized employees from the definitions of laborer and mechanic, such as engineers, architects, inspectors, testers, and troubleshooters; wind or solar commissioning technicians; workers involved in tie-ins and other commissioning, testing, and troubleshooting of grid-connected facilities after mechanical completion; workers associated with initial energization, testing, and synchronization of installed equipment; wind turbine commissioners; and other similar professionals. In requesting these exclusions from the definition of laborer or mechanic, commenters analogized work described in the DOL Field Operations Handbook (FOH)³⁰

that is not covered under the DBA unless those individuals are performing the duties of a laborer or mechanic.

Commenters generally supported the working foreperson rule, but some sought additional guidance regarding whether the 20-percent threshold applies to professional workers other than working forepersons. Some commenters requested clarifying that any foreperson, owner, or administrative, executive, or clerical personnel contributing more than 20 percent of their time during a workweek to laborer or mechanic duties be considered laborers and mechanics for the time spent conducting laborer and mechanic duties, even if they are exempt under 29 CFR part 541. Other commenters suggested limiting the application of the 20-percent threshold to these other individuals, but only if they are not exempt under 29 CFR part 541. A few commenters suggested that individuals who own at least a 20 percent equity interest and work on a construction project, should also be excluded from the PWA requirements, because they are not subject to DBA requirements to receive prevailing wages. One commenter asked if non-exempt individuals (other than working forepersons) who devote 20 percent or less of their time to laborer and mechanic duties are laborers and mechanics. One commenter stated that it would be difficult for taxpayers and contractors to bifurcate supervisory and direct time for a working foreperson in determining the 20-percent threshold.

The final regulations incorporate the definitions of laborer and mechanic from the Proposed Regulations, which is largely consistent with the definition of those terms for DBA purposes. The Treasury Department and the IRS have determined that providing an exhaustive list of those specialized employees who are not laborers or mechanics or defining laborers and mechanics on an industry-by-industry basis is not practical and does not provide the necessary flexibility for future industry developments. Although the DOL FOH may provide some guidance to taxpayers, whether an individual is a laborer or mechanic will depend on the specific job duties and the relevant facts and circumstances. The final regulations also adopt the rule that persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics and the working foreperson rule as proposed. The final

regulations do not extend the working forepersons rule to other working professionals or adopt any exceptions from the proposed rule for owners.

2. Employed

Consistent with the DBA, proposed § 1.45–7(d)(4) would have provided that the definition of employed means “performing the duties of a laborer or mechanic for the taxpayer, contractor, or subcontractor (as applicable), regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.” For purposes of the Prevailing Wage Requirements, this definition would generally be different and broader than the definition used elsewhere in the Code, for example with respect to employment taxes, as well as the associated reporting and withholding obligations. Laborers and mechanics who are independent contractors for employment tax purposes may be considered employed for purposes of the Prevailing Wage Requirements.

Commenters supported the Proposed Regulation’s definition of “employed.” The commenters stated that the application of prevailing wages to all workers, even if they are non-employees, aligns with the DBA. The Treasury Department and the IRS agree, and the proposed definition is adopted without change.

3. Construction, Alteration, or Repair

Proposed § 1.45–7(d)(2)(i) would have provided that the term construction, alteration, or repair generally means “construction, prosecution, completion, or repair” as defined in 29 CFR 5.2 of the DBA regulations. In general, 29 CFR 5.2 defines construction, prosecution, completion, or repair as all types of work done on a particular building or work at the site of the work. Proposed § 1.45–7(d)(2)(i) would have also clarified that construction, alteration, or repair for purposes of the PWA requirements has no bearing on any other sections of the Code, including any determination of construction, alteration, repair, or maintenance under section 162 or 263 of the Code.

Some commenters requested clarification on the definition of construction, alteration, or repair of a facility. Commenters also requested clarification that alteration or repair means construction-like or construction-type activities. One commenter suggested clarifying the differences between construction and alteration or repair so that a taxpayer may determine those activities that constitute construction and those that are

³⁰ The DOL Field Operations Handbook for administering the DBA can be found at <https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15>.

www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15.

alteration or repair. Commenters also recommended clarifying whether, as under the DBA, the PWA requirements do not apply to installation work related to supply or service contracts, unless such installation involves substantial construction work distinct and separable from the non-construction aspects of the contract. One commenter requested clarifying that the work of material suppliers is not considered construction consistent with the DBA. Another commenter requested that the final regulations clarify that certain preliminary work that is not considered construction for DBA purposes (such as exploratory drilling), is not considered construction for PWA purposes.

In response to comments the final regulations clarify that “construction, alteration, or repair” means the same activities that are covered by the DBA definition of construction, prosecution, completion, or repair under 29 CFR 5.2 that are performed with respect to a facility. Activities that are excluded from the DBA definition of construction, prosecution, completion, or repair under 29 CFR 5.2 are similarly excluded under the final regulations. This definition of construction, alteration, or repair covers some activities that occur during the construction of a facility before it is placed in service as well as activities that take place after placed in service as alterations or repairs. Further, specific installation work (as applicable) that occurs during the construction of a facility would be subject to PWA requirements consistent with 29 CFR 5.2. As discussed in Section VI. of this Summary of Comments and Explanation of Revisions, the final regulations clarify that construction of a facility is interpreted consistent with the underlying definition of a facility for tax purposes.

4. Maintenance

Proposed § 1.45–7(d)(2)(i) would have provided that the term construction, alteration, or repair generally excludes maintenance work that occurs after a facility is placed in service. The preamble to the Proposed Regulations stated that maintenance would be work that is ordinary and regular in nature and designed to maintain existing functionality of a facility as opposed to an isolated or infrequent repair of a facility to restore specific functionality or adapt the facility for a different or improved use.

Under the Proposed Regulations, work designed to maintain and preserve functionality of a facility after it is placed in service would have included basic maintenance such as regular inspections of the facility, regular

cleaning and janitorial work, replacing materials with limited lifespans such as filters and light bulbs, and the calibration of any equipment. Proposed § 1.45–7(d)(2)(i) would have provided that maintenance work that occurs before the facility is placed in service may constitute construction for which prevailing wages must be paid in order to claim the increased credit amount. Under the Proposed Regulations, maintenance would not have included work that improves a facility, adapts it for a different use, or restores functionality as a result of inoperability. Proposed § 1.45–7(d)(2)(ii) would have also included an example.

Commenters requested additional guidance on how to determine whether work performed after a facility is placed in service is alteration or repair work or maintenance work. One commenter requested clarification on how to distinguish between work that restores functionality and work designed to maintain and preserve existing functionalities. Commenters also suggested clarifying whether work performed before or after a facility is placed in service impacts whether it would be considered maintenance work.

One commenter suggested that the final regulations provide that maintenance work includes the standard replacement of equipment and parts (including with functionally similar, yet improved parts), minor or incidental repair or installation work, and routine tasks preventing failure or decline. Another commenter requested that the final regulations define maintenance to exclude work that is extended in nature, involves a major replacement, or is otherwise not regular and customary for the applicable type of project. Several commenters also requested that the final regulations define maintenance to include reactive maintenance, isolated or infrequent repair to restore specific functionality; troubleshooting; activities related to operations (operations and maintenance or O&M work); and work performed by welders, winders, or machinists to address a customer service outage. Another commenter suggested that work performed under a construction contract warranty after a facility is placed in service should be treated as maintenance work.

A few commenters suggested that the final regulations incorporate a *de minimis* threshold to distinguish between maintenance and alteration or repair work based on either a specified dollar amount and/or a percentage of the original capitalized cost of the qualified facility. Other commenters suggested that the term maintenance in

the Proposed Regulations be revised to mirror descriptions of maintenance work in DBA sub-regulatory guidance, the Service Contract Act (SCA), nuclear industry maintenance standards, or regulations and case law related to sections 162 and 263.

Commenters stated that the example provided under proposed § 1.45–7(d)(2)(ii) may have unintentionally suggested a broader definition of alteration or repair than anticipated, because the example described the replacement of a part in an inverter as a rare occurrence although it may be a regular occurrence at a solar farm. A few commenters suggested that the final regulations incorporate additional examples of basic maintenance, and alteration or repair activities, as applied to specific facilities or properties, including alternative fuel infrastructure, solar farms, biogas systems, ethanol facilities, nuclear facilities, and offshore wind facilities.

In the Proposed Regulations, the Treasury Department and the IRS sought to distinguish between alteration and repair work (for which payment of prevailing wages is required whether the work occurs before or after the qualified facility is placed in service) and maintenance work (for which payment of prevailing wages is required only if the work occurs before a qualified facility is placed in service), consistent with the DBA and DOL sub-regulatory guidance contained in the Prevailing Wage Resource Book (PWRB).³¹

While 29 CFR 5.2 includes various activities that fall within the definition of construction, including altering, remodeling, some installation work, and painting and decorating, it does not specifically address maintenance work. However, the DOL PWRB compares servicing and maintenance work typically covered by the SCA and construction activities of all types that are covered by the DBA.

The DOL PWRB describes maintenance work that would be covered by the SCA, and not the DBA, as work that is routinely scheduled and continuous or recurring. According to the PWRB, SCA-covered maintenance work typically includes: (i) work that is needed to keep the building or work in its current condition so that it may continue to be used; (ii) work that does not improve the current condition or function of the building or work; or (iii) work that may be completed relatively

³¹ The DOL Prevailing Wage Resource Book can be found at https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book/determining-which-labor-standards-apply#SCA-covered_maintenance_work.

quickly. Additionally, according to the PWRB, SCA-covered maintenance work uses skills that are not typical of the construction trade. By contrast, the PWRB states that DBA-covered repair work typically includes activities such as the restoration or improvement of a building or work by replacement, overhaul, or reprocessing of constituent parts or materials. According to the PWRB, DBA-covered repair work includes an activity that: (i) generally improves the building or work, either by fixing something that is not functioning properly or by improving upon the building or work's existing condition; (ii) is not continuous or recurring, but involves the correction of individual problems or defects as separate and segregable incidents; (iii) improves the building or work's structural strength, stability, safety, capacity, efficiency, or usefulness; or (iv) takes more time to complete. Finally, according to the PWRB, DBA-covered repair work uses skills that are typical of the construction trades.

The DOL PWRB also states that an important factor in determining coverage under the SCA or the DBA is whether the activity is undertaken as part of a construction project prior to its completion. For example, the DBA applies if cleanup, landscaping, carpet laying, and drapery installation activities are undertaken as an integral part of or in conjunction with new construction, such as under a construction contract under which such activities preceded and are conditional to acceptance of a building or public work by the owner. The SCA, however, applies if the same activities are performed after construction and after contractors and subcontractors have finished and left the site, and after the contracting agency has accepted the building.

The Proposed Regulations would have distilled the guidance in 29 CFR 5.2 and the guidance in the DOL PWRB³² to provide that work designed to maintain and preserve functionality of a facility after it is placed in service would not be subject to the Prevailing Wage Requirements. Work designed to maintain and preserve functionality of a facility after it is placed in service would have included basic maintenance such as regular inspections of the facility, regular cleaning and janitorial work, replacing materials with limited lifespans such as filters and light bulbs, and the calibration of any equipment. However, paying prevailing wages

would be required for work that improves a facility, adapts it for a different use, or restores functionality as a result of inoperability.

The Treasury Department and the IRS agree that additional clarification on the distinction between alteration and repair work and maintenance work is needed. Accordingly, the final regulations revise the Proposed Regulations to more closely align with 29 CFR 5.2 and DOL sub-regulatory guidance in the PWRB.

Specifically, the final regulations provide that maintenance work is work that is routinely scheduled and continuous or recurring. The final regulations explain that maintenance normally involves the activity of keeping the facility in its current condition so that it may continue to be used. The final regulations include additional clarifying criteria that repair work normally includes an activity that: (i) improves the facility, either by fixing something that is not functioning properly or by improving upon the facility's existing condition; (ii) involves the correction of individual problems or defects as separate and segregable incidents and is not continuous or recurring; or (iii) improves the facility's structural strength, stability, safety, capacity, efficiency, or usefulness. The final regulations retain the proposed rule that maintenance work that occurs before the qualified facility is placed in service generally constitutes construction work for which wages at rates not less than the prevailing rates must be paid.

As stated by many commenters, and several administrative decisions involving the application of the DBA or the SCA,³³ the determination of whether work is properly viewed as maintenance or as an alteration or repair is dependent on the specific facts and circumstances of the work. The final regulations clarify that the facts and circumstances are ultimately determinative.

³³ See *Norsaire Systems Inc.*, WAB Case No. 94-06, 1995 WL 90009 (Feb. 28, 1995) (explaining that the distinction between covered construction work and non-covered service and maintenance work depended on using a number of nondeterminative factors to closely examine actual work performed); see also *ITT Base Services, Inc.*, B-220518.2 (Nov. 10, 1986) (noting that distinguishing between construction and maintenance activities may be difficult, and some repair activities could reasonably be categorized as either Davis-Bacon Act or Service Contract Act repair work depending upon the context in which they are performed); *Four Star Maintenance*, B-229703 (Apr. 7, 1988) (noting that the determination of whether items of work involve basic maintenance within the coverage of the Service Contract Act, or are more in the nature of construction, alteration, or repair within the scope of the Davis-Bacon Act, is largely a matter of judgment).

Because of the highly factual nature of the determination regarding whether an activity is maintenance or alteration or repair work, the final regulations do not adopt suggestions to include additional examples distinguishing between maintenance and alteration or repair. Additionally, the example in proposed § 1.45-7(d)(2)(ii) has been removed. Providing industry-by-industry examples is not practicable and may imply an inconsistent application of the general rule. As stated in the comments, for example, the proposed example was not indicative of ordinary practices in the solar industry. The Treasury Department and the IRS understand that taxpayers may encounter difficulties in distinguishing maintenance from alterations or repairs; however, the additional information contained in the final regulations provides taxpayers with sufficient guidance to help differentiate their activities based on the taxpayer's relevant facts and circumstances. Additionally, the Treasury Department and the IRS decline, at this time, to provide a *de minimis* threshold or safe harbor distinguishing between maintenance work and alteration or repair work.

D. Correction and Penalty Procedures

1. In General

Section 45(b)(7)(B)(i) provides that if a taxpayer fails to satisfy the Prevailing Wage requirements, the taxpayer "shall be deemed to have satisfied such requirement under such subparagraph with respect to such facility for any year if, with respect to any laborer or mechanic who was paid wages at a rate below the [prevailing rate] for any period during such year," the taxpayer makes the applicable correction payments and pays the penalty. Under section 45(b)(7)(B)(i)(II), the amount of the penalty is \$5,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the required prevailing rates. Section 45(b)(7)(B)(iii) provides that if the failure to ensure that the laborers and mechanics are paid wages at rates not less than the prevailing rates is found to be due to intentional disregard, then the amount of the correction payment is tripled and the amount of the penalty payment is doubled.

The Proposed Regulations would have required the payment of wages at rates not less than the prevailing wage rates at the time work is performed with respect to the construction, alteration, or repair of a facility in order to claim the increased credit amount. The Proposed Regulations would have also provided that the requirement to pay not less than

³² The Proposed Regulations relied on a prior version of the PWRB. These final regulations reflect updates to the PWRB made in April of 2024.

the prevailing wage rates becomes binding only if the increased credit amount is claimed on a return, and that the obligation to make correction payments and pay the penalty would not become binding until a return is filed claiming the increased credit amount.

The preamble to the Proposed Regulations stated that, in general, taxpayers would be obligated to make any necessary correction payments to any laborer and mechanic on or before the date a return is filed claiming an increased credit amount. Under the Proposed Regulations, the earliest time that a taxpayer can make a penalty payment to the IRS would have been at the time of filing a tax return claiming the increased credit amount. However, taxpayers would retain the option of making correction payments to laborers and mechanics at any time after the initial wage payments were made and in advance of the filing of a tax return claiming the increased credit amount in order to limit the amount of additional interest the taxpayer would have to pay at the elevated rates set forth in section 45(b)(7)(B)(i)(I)(bb). The Proposed Regulations would have provided that whether taxpayers make the necessary correction payments and pay the penalty amounts promptly is one of the facts and circumstances that would be considered for purposes of the enhanced penalties for intentional disregard.

Under section 45(b)(7)(B)(iv), once the IRS makes a final determination that a taxpayer has failed to satisfy the Prevailing Wage Requirements, the taxpayer must make the correction and penalty payments within 180 days after the final determination to be eligible for the increased credit. The Proposed Regulations would have also provided a deadline for a taxpayer's ability to use the correction and penalty provisions to rectify a failure to comply with the Prevailing Wage Requirements once the IRS makes a final determination that a taxpayer has failed to satisfy the Prevailing Wage Requirements. The Proposed Regulations would have clarified that this final determination would come in the form of a notice sent by the IRS.

One commenter argued that it is inequitable to permit taxpayers to receive the benefit of increased credit amounts before workers received their rightful compensation. The commenter stated that the penalty and cure provisions allow corrections after the filing of a tax return, when the credit is already claimed. The commenter suggested that the final regulations require correction no later than the earlier of the tax return filing or when

the taxpayer receives an economic benefit. Another commenter recommended that corrective payments be required to be paid within 90 days following the year in which the original compensation should have been paid.

One commenter suggested that if the taxpayer's failure to pay prevailing wages was unintentional, the taxpayer should be given 90 days to make correction and penalty payments, but if the taxpayer acted intentionally then the taxpayer should be given 30 days to pay the penalty and two weeks to make correction payments. An additional commenter suggested extending the cure period to permit taxpayers to cure further mistakes once they become known.

The comments requesting changes to the timing of correction and penalty payments are not adopted. The prevailing wage provisions generally require compliance with the payment of applicable prevailing wage rates at the time work is performed. The final regulations reiterate the position in the Proposed Regulations that the correction and penalty provisions relate back to the time of the failure. For example, the final regulations provide that interest accrues on back wages to the time of the failure to pay wages at rates not less than the applicable prevailing rates. However, section 45(b)(7)(B)(iv) permits taxpayers to make correction and penalty payments up to 180 days after a final determination and remain eligible for the increased credit amount. These final regulations encourage the taxpayer to make correction payments sooner by waiving the penalty payment requirement if the taxpayer makes the required correction payment in a timely manner and meets additional requirements. Further, taxpayers may avoid some of the challenges in making correction payments, such as locating former employees, by addressing any failures immediately after discovering them.

Consistent with section 45(b)(7)(B)(ii), the Proposed Regulations would have provided that deficiency procedures do not apply to the assessment or collection of any penalty payment required to be made in connection with a failure to meet the Prevailing Wage Requirements. The Proposed Regulations would have clarified that although deficiency procedures would not apply to the penalty payment, deficiency procedures would apply to any determination by the IRS disallowing a taxpayer's claim for the increased credit amount (for example, because of a failure to pay prevailing wages and the correction and penalty amounts). Under the Proposed

Regulations, if the taxpayer does not correct, and therefore is not subsequently granted the increased credit amount, no penalty would have been assessed under section 45(b)(7)(B).

Commenters requested that the final regulations provide guidance regarding a taxpayer's ability to contest an IRS determination that a taxpayer failed to pay prevailing wages. Commenters suggested that deficiency procedures be made available to challenge correction payment amounts due to laborers and mechanics once a final determination is made. A commenter suggested that taxpayers be provided a forum to expeditiously resolve any disputes regarding disallowed credits and all appeals of IRS determinations before such decisions become final.

Commenters stated that, other than a failure to make the required correction and penalty payments, the Proposed Regulations do not specify under what circumstances there would be a determination by the IRS disallowing a claim for the increased credit amount.

The deficiency procedures are statutorily precluded and providing taxpayers prepayment forums to resolve disputes would cause unreasonable delays to workers who were entitled to correction payments from receiving the full amount of underpaid wages. Additionally, the statutory 180-day period taxpayers are allowed to cure a failure after receiving a final determination does not toll the general three-year statute of limitations for assessment under section 6501. Thus, the final regulations do not provide any additional forum for taxpayers to challenge an IRS determination. However, if a taxpayer refuses to make correction and penalty payments, the increased credit amount will be disallowed. Any disallowance of a credit, including disallowance of increased credit amounts, would be subject to deficiency procedures (including the opportunity to seek review by the IRS Independent Office of Appeals) and a taxpayer would be able to petition the U.S. Tax Court to review the underlying deficiency determination on a *de novo* basis.

A commenter appreciated the Treasury Department and the IRS's consideration of waivers for penalties and provisions for curing wage deficiencies but recommended that the taxpayer be given the opportunity to review and cure mistakes. The commenter explained that due to the complexity of the PWA requirements, the logistics of projects, and the management of people, there will be instances in which the taxpayer will not meet all of the PWA requirements

perfectly. The Treasury Department and the IRS agree and have provided for a limited penalty waiver to address such circumstances as discussed in Section VII.D.4. of this Summary of Comments and Explanation of Revisions.

One commenter stated that a failure to maintain records by one or more subcontractors or a subsequent determination by the IRS that additional work, additional laborers or mechanics, or secondary construction sites are covered by the PWA requirements may create a circumstance in which the curative payment cannot be calculated because of the absence of records. The commenter suggested that the taxpayer not be disallowed the increased credit amount under such circumstances if the taxpayer is willing to make a curative payment based on a reasonable estimate of the wages that should have been paid. Commenters also suggested that the final regulations waive penalties and the requirement to make correction payments if the taxpayer hires a third-party reviewer, such as a certified public accountant, to review payroll records for compliance with the Prevailing Wage Requirements.

Permitting taxpayers to rely on a third-party reviewer to demonstrate compliance is inconsistent with the statutory requirement that the taxpayer ensure that laborers and mechanics are paid prevailing wages. Maintaining adequate records is the taxpayer's responsibility under section 6001 as explained in Section X.A. of this Summary of Comments and Explanation of Revisions. A failure to maintain adequate records, even those of lower tier subcontractors, does not excuse taxpayers from their obligations to comply with the PWA requirements.

One commenter requested that the final regulations provide that corrective payments are neither taxable income to the workers nor deductible by the payors. The commenter stated that taxing corrective payments is unfair to the workers and argued that a taxpayer or transferee who receives the benefit of the tax credits should not be able to "double dip" and take a tax deduction for the payment of the penalty or the increased corrective payments. The determination of whether correction payments are taxable to a laborer or mechanic or deductible by the payor is governed by Federal tax law that is outside the scope of these final regulations.

Commenters stated that the preamble to the Proposed Regulations explained that the regulations would adopt, by cross-reference, the review and appeal procedures available to any interested party under the DBA with respect to

wage determinations generally. Commenters explained that a DBA determination can be appealed to the DOL, a process that could take longer than the 180-day cure period under section 45(b)(7)(B)(iv). Commenters also sought clarification that the 180-day cure period would be tolled until a taxpayer has exhausted the appellate remedies with the DOL. From a practical standpoint, the commenter emphasized that once wages are paid it would be harmful to both employees and employers to attempt to claw back such payments if there is a subsequent determination by the DOL that results in the correction and penalty payments not being owed.

The final regulations do not adopt this comment to provide for tolling of the 180-day cure period if a wage determination has been appealed to the DOL. With respect to the commenter's comparison to the review and appeal procedures for wage determinations, that process is distinct from the 180-day period after an IRS determination during which a taxpayer may make correction and penalty payments to be deemed to have complied with the Prevailing Wage Requirements. The review and appeal procedures available to a taxpayer under the Proposed Regulations regarding wage determinations are with respect to the DOL's determination of an applicable prevailing wage rate. The IRS's determination of a failure to pay prevailing wage rates triggering the 180-day cure period is not subject to appeal, and thus not subject to tolling. Section 45(b)(7)(B)(ii) provides that the deficiency procedures for income, estate, gift, and certain excise taxes do not apply with respect to the assessment or collection of any penalty imposed by section 45(b)(7)(B). A taxpayer would, however, be able to appeal any disallowance of the increased credit amount after the expiration of the 180-day cure period.

Regarding the commenter's practical concern, if a taxpayer believes that the IRS incorrectly issued a final determination that the taxpayer failed to pay prevailing wages, then the taxpayer may decline to make correction and penalty payments and wait to petition an IRS deficiency determination to the U.S. Tax Court following the end of the 180-day cure period. Alternatively, after the IRS issues a final determination, the taxpayer could make correction and penalty payments and remain eligible for the increased credit amount. The taxpayer in this scenario would retain the ability to seek a refund of the penalty payments paid to the IRS.

One commenter observed that the cost of penalties is steep, given the reliance that most taxpayers will have to place on contractors and subcontractors to comply with the PWA requirements. The Treasury Department and the IRS recognize that taxpayers will have to oversee and rely on contractors and subcontractors to comply with the PWA requirements. However, the statutory text of the IRA puts the responsibility on the taxpayer to ensure that contractors and subcontractors comply with the PWA requirements, including section 45(b)(7)(B)(i)(II), which prescribes the amount of penalty payment. Through the factors considered for purposes of intentional disregard, these regulations create a framework that encourages taxpayer practices, such as quarterly compliance reviews and flow-down contract provisions, that will assist taxpayers in complying with the Prevailing Wage Requirements. Further, these regulations reflect the Treasury Department's and the IRS's waiver authority with respect to the penalty if the failures were small in amount or occurred in a limited number of pay periods.

Additionally, a commenter requested that, specifically for the initial years following the application of the PWA requirements to the section 45Z credit, taxpayers be exempted from penalties if they make correction payments. The commenter stated that any noncompliance during initial years will more likely be a result of inexperience than intentional disregard. The Treasury Department and the IRS understand commenters' concerns regarding how the correction and penalty procedures affect each relevant industry or taxpayers claiming the increased amount of credit. A transition rule is provided for section 45Z, described in Section IX.G. of this Summary of Comments and Explanation of Revisions. The penalty waiver for inadvertent errors is described in Section VII.D.4. of this Summary of Comments and Explanation of Revisions.

2. Laborers or Mechanics Who Cannot Be Located

Under section 45(b)(7)(B)(i), a taxpayer is deemed to satisfy the Prevailing Wage Requirements if, with respect to any laborer or mechanic who was paid wages at rates less than the prevailing rates for any period during that year, the taxpayer makes a correction payment to the affected laborer or mechanic and the required penalty payment to the IRS. Section 45(b)(7)(B)(i) does not except taxpayers from the requirement to make the

correction payment, even if the taxpayer is unable to locate the laborer or mechanic.

The preamble to the Proposed Regulations explained that the Treasury Department and the IRS expect that taxpayers will be able to establish having made correction payments even if a former laborer or mechanic cannot be located and provided examples of how such payments could be made, such as compliance with State unclaimed property rules and withholding and information reporting obligations as means of substantiating the payments. The Treasury Department and the IRS requested comments concerning appropriate rules for situations in which laborers and mechanics who are owed wages cannot be located and how taxpayers may establish that they have made the required correction payment described in section 45(b)(7)(B)(i)(I).

A few commenters suggested that the final regulations provide additional guidance regarding situations in which correction payments are due to affected laborers or mechanics who cannot be located. A commenter suggested the formalization of specific procedures by the Treasury Department for such circumstances and asked the Treasury Department to solicit further comments from stakeholders on this issue. One commenter suggested requiring the taxpayer to send the corrective payment amount to the State where the missing worker performed the work along with payroll information validating the payment amount, and records of attempts by the taxpayer to reach the former laborer or mechanic. One commenter stated that the final regulations should not rely on State unclaimed property laws. A commenter stated that State unclaimed property laws may impose additional burdens and complexities on taxpayers (such as requirements that due diligence efforts be undertaken by a holder of unclaimed property to find the rightful owner of such property before the property can be delivered to the State). Other commenters asked that the final regulations provide that a payment made to a State pursuant to the State's unclaimed property rules be deemed to satisfy the correction payment requirement for purposes of section 45(b)(7)(B)(i)(I).

The Treasury Department and the IRS recognize that the construction of a qualified facility may occur over the course of several years and some taxpayers who fail to meet the Prevailing Wage Requirements may be unable to locate all laborers and mechanics to which correction

payments must be made. However, section 45(b)(7)(B)(i) does not excuse taxpayers from the requirement to make the correction payment, even if the taxpayer is unable to locate the laborer or mechanic. Unless another exception applies, if a taxpayer fails to make and substantiate all necessary correction payments, the taxpayer will not be eligible for the increased credit amount. Although the statute and final regulations permit corrections, contemporaneous compliance with the Prevailing Wage Requirements will likely be easier for taxpayers to administer and substantiate, because locating workers after a project has ended may be difficult and time consuming. The final regulations confirm that a taxpayer is not excused from the requirement to make the correction payment even if the taxpayer is unable to locate a laborer or mechanic.

As provided for under the Proposed Regulations, the Treasury Department and the IRS continue to expect that taxpayers will be able to substantiate having made all necessary correction payments even if a former laborer or mechanic cannot be located. In general, States have developed specific rules for the payment of wages to former laborers and mechanics who cannot be located. These rules can include diligence requirements to locate the laborer or mechanic, information reporting obligations to relevant State agencies on the unclaimed wage amounts, and requirements to remit any unclaimed wage amounts to State control as unclaimed property after defined holding periods. A taxpayer will be deemed to have paid a correction payment to a laborer or mechanic who cannot be located if the taxpayer can establish that correction payments have been made. A taxpayer may establish that correction payments have been made by demonstrating compliance with the applicable State unclaimed property law and all Federal and State withholding and information reporting requirements with respect to the payments.

3. Intentional Disregard

Section 45(b)(7)(B)(iii) provides that if the failure to ensure that the laborers and mechanics are paid wages at rates not less than the applicable prevailing wage rates is found to be due to intentional disregard, then the amount of the correction payment is tripled and the amount of the penalty payment is doubled. The Proposed Regulations would have provided that failures to meet the Prevailing Wage Requirements would be due to intentional disregard if

they are knowing or willful, which is a determination that must be made by considering all relevant facts and circumstances. The Proposed Regulations would have provided a non-exhaustive list of factors that may be relevant to this determination.

Proposed § 1.45-7(c)(3)(iii) provided that the relevant facts and circumstances in weighing intentional disregard would include whether a failure to satisfy the Prevailing Wage Requirements was part of a pattern of conduct that includes repeated or systemic failures to ensure that the laborers and mechanics were paid wages at or above the applicable prevailing wage rate and whether the taxpayer: (i) failed to take steps to determine the applicable classifications of laborers and mechanics; (ii) failed to take steps to determine the applicable prevailing wage rate(s) for laborers and mechanics; (iii) promptly cured any failures to ensure that laborers and mechanics were paid wages not less than the applicable prevailing rates; (iv) has been required to make a penalty payment in previous years; (v) undertook a quarterly, or more frequent, review of wages paid to mechanics and laborers to ensure that wages not less than the applicable prevailing wage rate were paid; (vi) included provisions in any contracts entered into with contractors that required the contractors and any subcontractors retained by the contractors to pay laborers and mechanics at or above the prevailing wage rates and maintain records to ensure the taxpayer's compliance with the recordkeeping requirements; (vii) posted in a prominent place at the facility or otherwise provided written notice to laborers and mechanics during the construction, alteration, or repair of the facility: (a) of the applicable wage rate(s) as determined by the DOL for all classifications of work to be performed for the construction, alteration, or repair of the facility, and (b) that in order to be eligible to claim certain tax benefits, employers must ensure that laborers and mechanics are paid wages at rates not less than such wage rates; and (viii) had in place procedures whereby laborers and mechanics could report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with the wage determination of workers to appropriate personnel departments or managers without retaliation or adverse action. The Treasury Department and the IRS requested comments on additional criteria that might be used as part of a facts and circumstances analysis of intentional disregard in this context.

Many commenters generally expressed support for enhanced penalties for intentional failures to comply with the PWA requirements and the factors that would be considered in the Proposed Regulations. One commenter suggested that the Treasury Department and the IRS engage in outreach to educate taxpayers about distinguishing between intentional and unintentional violations of the PWA requirements. Some commenters recommended that the final regulations provide an inclusive and exhaustive list of practices for taxpayers to follow in order to show they acted with proper diligence and in good faith in trying to meet the PWA requirements. The final regulations do not incorporate this suggestion. Although the final regulations provide a detailed list of factors for determining intentional disregard, the list remains non-exhaustive. There may be additional factors that the IRS will consider based on the specific facts and circumstances of the failure. These final regulations provide guidance to taxpayers about the application of the PWA requirements to assist with compliance, including the numerous factors that the IRS will consider in determining whether failures to comply were the result of intentional disregard.

Commenters had the following suggestions for additional factors or modifications to the proposed factors. Several commenters suggested that the final regulations include intentional disregard factors relating to pre-filing activities that are not applicable to taxpayers claiming the increased credit amount (for example, whether a taxpayer regularly submitted certified weekly payroll records to the IRS or publicly declared the intent to claim the credit). Because those underlying pre-filing activities are not applicable, the comments suggesting factors relating to those specific actions are not included as factors demonstrating intentional disregard. However, several other commenters suggested additional factors or modifications to the proposed factors relating to other pre-filing activities, that while not required, could be relevant to a determination of intentional disregard.

Specifically, with respect to the factors in proposed § 1.45–7(c)(3)(iii)(A) through (C) commenters suggested that the final regulations clarify what would constitute a pattern of conduct and a failure to take steps to determine applicable classifications and wage rates. One commenter suggested that a taxpayer's pattern of conduct include the taxpayer's conduct on non-IRA projects and violations unrelated to prevailing wage rules (including

violations under DBA). Another commenter recommended that the final regulations consider the taxpayer's history of violations of any Federal, State, or local laws. The Treasury Department and the IRS agree that some additional clarification would be helpful for taxpayers and the IRS. The final regulations clarify that taking steps to determine applicable classifications and wage rates could include a quarterly or more frequent review of these actions by the taxpayer (or a third party acting on behalf of the taxpayer). The final regulations retain the factor describing a pattern of conduct and clarify that the pattern of conduct could include failures to pay prevailing wages as required under other laws. The final regulations do not specifically include all possible violations of law; although certain violations may be relevant depending on the facts and circumstances. What constitutes a pattern will depend on the facts and circumstances.

Commenters also suggested modifications to the factors in proposed § 1.45–7(c)(3)(iii)(H) and (I). Specifically, commenters stated that proof, via signatures of laborers and mechanics, that covered employees have been given notice of the taxpayer's intent to pay prevailing wages should be a factor. The final regulations retain the factor from the Proposed Regulations regarding written notice to laborers and mechanics. However, this factor relates to the notice that in order to claim certain tax benefits, employers must ensure that laborers and mechanics are paid wages at rates not less than prevailing wage rates. It does not consider whether a taxpayer disclosed their intent to claim a tax benefit. In response to the comment, the final regulations further clarify that acknowledgement of the notice by the laborer or mechanic is an additional factor.

Commenters also suggested that the poster or notice to employees described in proposed § 1.45–7(c)(3)(iii)(H) include instructions on how laborers and mechanics may contact the taxpayers' personnel departments or taxpayers' managers to report suspected failures to pay prevailing wages and/or suspected failures to classify workers without retaliation or adverse action. The final regulations include this additional information. At least one commenter suggested that the factor in proposed § 1.45–7(c)(3)(iii)(I) regarding whether a taxpayer had in place a procedure to report suspected failures to pay prevailing wages without retaliation or adverse action be expanded to include employment tax violations or

workplace standards laws. The commenter also suggested the factor be revised to also require that no actual retaliation or adverse action occurred. The final regulations incorporate the comments regarding employment tax and workplace standards violations. The final regulations also consider whether the taxpayer investigated complaints and took appropriate action.

A commenter suggested adding a factor addressing the use of debarred contractors. The commenter stated that contractors who are debarred from working on publicly funded projects for serious violations of DBA prevailing wage requirements are more likely to violate the Prevailing Wage Requirements on IRA projects. The Treasury Department and the IRS agree that knowingly contracting with debarred contractors could be a factor demonstrating intentional disregard. The final regulations reflect this comment.

Several commenters made general suggestions that the intentional disregard factors should be strengthened to encourage behaviors that will help ensure that laborers and mechanics working on projects for which an increased credit amount may be claimed are paid prevailing wages. As stated elsewhere in this preamble, the Treasury Department and the IRS agree that adding factors to encourage certain practices will further compliance with the Prevailing Wage Requirements. Accordingly, the final regulations add new factors that consider whether the taxpayer has: (i) provided or otherwise made available to laborers and mechanics paystubs or other individual payroll records reflecting the amount being paid per pay period (including the specific hourly rate and any deductions from wages); (ii) conducted investigations or otherwise reviewed complaints of retaliation or adverse actions against workers for reporting the underpayment of wages and took appropriate corrective action; (iii) provided notice regarding possible rights under the Taxpayer First Act; and (iv) whether the taxpayer failed to maintain and preserve records in accordance with § 1.45–12.

Some commenters stated that considering all relevant facts and circumstances in determining whether a failure to comply with the PWA requirements was intentional would be burdensome to taxpayers who would have to investigate their contractors and subcontractors about possible failures. One commenter suggested that additional guidance consider the degrees of separation between contractual parties responsible for

fulfilling the PWA requirements. The final regulations do not incorporate this suggestion. Under section 45(b)(7)(A), the taxpayer must ensure that any laborers and mechanics employed by the taxpayer, contractor, or subcontractor are paid wages at rates not less than the prevailing rates. If the taxpayer fails to do so, and that failure is due to intentional disregard, the enhanced correction and penalty payments apply. It is the obligation of the taxpayer to ensure that its contractors and subcontractors pay wages at rates not less than the applicable prevailing wage rates if the taxpayer claims the increased credit amount, regardless of the number of contracts separating the taxpayer and the subcontractor. This responsibility of the taxpayer is one reason why the final regulations include factors that help demonstrate whether a taxpayer's failure was due to intentional disregard.

One commenter requested that intentional disregard penalties be solely limited to those taxpayers who admit to intentionally failing to pay prevailing wages. The final regulations do not adopt this suggestion, as the statute does not limit the application of intentional disregard penalties to only those who admit to intentionally failing to pay prevailing wages.

The Proposed Regulations would have also provided a rebuttable presumption against a finding of intentional disregard if the taxpayer made the correction and penalty payments before receiving a notice of an examination with respect to a return that claimed the underlying increased amount of credit. This presumption of no intentional disregard is intended to encourage taxpayers who discover a failure to meet the Prevailing Wage Requirements after filing a return to promptly use the correction and penalty procedures to remedy that failure.

Some commenters supported the rebuttable presumption against intentional disregard and agreed that it would encourage taxpayers to make timely curative payments. Other commenters were critical of the presumption and suggested that it might encourage taxpayers to avoid promptly curing failures or allow taxpayers who knowingly or willfully violate the PWA requirements to avoid penalties. A few commenters suggested that the final regulations modify the presumption to apply only if the taxpayer makes the required correction and penalty payments before: (i) the earlier of the filing of the tax return claiming the credit or one year after discovering the failure, or (ii) the earlier of receiving

notice of an examination from the IRS or one year after discovering the failure.

The final regulations adopt the rebuttable presumption of no intentional disregard as proposed. The Treasury Department and the IRS appreciate the concerns of commenters. However, the presumption of no intentional disregard as proposed provides a valuable incentive to encourage taxpayers to regularly review and confirm that they are complying with the PWA requirements. Additionally, the rebuttable presumption requires all correction payments (including correction payments if a former laborer or mechanic cannot be located as described in Section VII.D.2. of this Summary of Comments and Explanation of Revisions) and penalty amounts be paid before the taxpayer receives a notice of examination. If the taxpayer does not correct the failure to ensure that prevailing wages are paid (either as a precursor to the application of the rebuttable presumption or otherwise in response to an IRS determination of a failure), the taxpayer is not eligible for the increased credit amount. Taxpayers are encouraged to regularly review payroll records to ensure that workers are paid prevailing wages. Conducting reviews and curing discovered failures to pay prevailing wages several years after payments were made may be difficult, particularly if multiple contractors and subcontractors were involved in the project.

A few commenters suggested including a presumption of intentional disregard if a labor union or other worker representative reaches out to a taxpayer, project developer, or contractor and raises concerns about the PWA requirements and the project developer or taxpayer chooses to move forward without making any changes regardless of the concern that was raised. Commenters also suggested finding that taxpayers acted with intentional disregard if they did not diligently investigate their contractor and subcontractor practices. For the reasons noted herein regarding the factors for intentional disregard, the suggestions to include a new presumption of intentional disregard are not adopted. The final regulations retain the approach of providing factors that will be considered in determining whether a failure was due to intentional disregard based on all relevant facts and circumstances.

4. Penalty Waiver

In general, the IRS may exercise its discretion to waive or decline to assert penalties in the interest of sound tax

administration. The Proposed Regulations would have provided limited penalty waivers for instances in which the failures to pay prevailing wages to laborers and mechanics for the construction, alteration, or repair of a facility were small in amount or occurred in a limited number of pay periods. The Proposed Regulations would have also provided that the penalty waiver cannot be used after a return has been filed claiming the increased credit amount. Finally, the Proposed Regulations would have applied the waiver authority in a manner that assists taxpayers seeking to be eligible for the increased credit amount while remaining consistent with the statutory requirement to ensure that laborers and mechanics are paid applicable prevailing wage rates. As noted in the preamble to the Proposed Regulations, the Treasury Department and the IRS understand that taxpayers intending to pay prevailing wage rates may make payroll errors or classification errors with respect to work that is performed by laborers or mechanics. The Proposed Regulations sought to account for these circumstances while continuing to ensure that laborers and mechanics are paid according to the applicable prevailing wage rates.

Proposed § 1.45–7(c)(6)(i) provided that the penalty payment requirement would be waived with respect to the construction, alteration, or repair performed by a laborer or mechanic during a calendar year if: (i) the taxpayer makes the required correction payment (back wages and interest) by the earlier of: (a) 30 days after the taxpayer became aware of the error, or (b) the date on which the tax return claiming the increased credit amount is filed; and (ii) either: (a) the laborer or mechanic is paid below the prevailing wage rate for not more than 10 percent of all pay periods of the calendar year (or part thereof) during which the laborer or mechanic worked on the construction, alteration, or repair of the facility, or (b) the difference between the amount the laborer or mechanic was paid for the calendar year (or part thereof) during which the laborer or mechanic worked on the construction, alteration, or repair of the facility and the amount required to be paid by the Prevailing Wage Requirements for the calendar year is not greater than 2.5 percent of the amount required under the Prevailing Wage Requirements. The Proposed Regulations would have used calendar years to measure any failures because taxpayers, contractors, and subcontractors performing construction

may have different taxable years and laborers and mechanics are generally paid on a calendar year basis. The Treasury Department and the IRS requested comments on the proposed use of calendar years in place of taxable years for this purpose.

Many commenters were supportive of the penalty waiver, but they provided practical concerns with the 30-day correction period and the maximum underpayment period and amount due to the short-term nature of some construction work, as well as the logistical difficulties involving multiple payroll periods and/or payroll processors used by different contractors and subcontractors. Commenters suggested increasing both the correction period and maximum underpayment period and amount to provide more time to account for these practical difficulties. Some commenters suggested increasing the correction period to 60 or 90 days. Others suggested raising the maximum underpayment period to the greater of three pay periods or 20 percent of all pay periods in a calendar year, and the maximum underpayment amount to the greater of \$5,000 or five percent of all amounts required to be paid in a calendar year. Another commenter suggested removing the maximum underpayment amounts entirely. At least one commenter supported finalizing the rule as is in the Proposed Regulations, because it is sufficient to address *de minimis* payroll errors. A few commenters suggested that the waiver should not be available to a taxpayer who did not provide their workers notice of their wage rate, maintained poor records, exercised no contemporaneous monitoring or due diligence, or retaliated against workers who complained of not being paid the prevailing wage. Given the complexity of the PWA requirements, one commenter recommended limiting penalties that apply to businesses with fewer than 50 employees.

In recognition of the comments that the proposed correction period is too short to be useful, the final regulations revise the proposed penalty waiver to provide that corrections must be made by the last day of the first month following the end of the calendar quarter in which the failure occurred. The final regulations clarify that the correction must be made within the relevant time period after the failure occurred, not when the taxpayer becomes aware of the failure. This revised correction period is intended to coincide with the due date for the filing of Federal employment tax returns. The Treasury Department and the IRS expect

that most employers will have conducted a review of payroll for each quarter in connection with the filing of their quarterly employment tax return, and they should be aware of failures at this time. This change will result in a correction period that generally ranges from one to three months depending on when the failure occurred.

The final regulations also modify the proposed waiver provision by increasing the maximum underpayment amount to underpayments that do not exceed five percent of all amounts required to be paid in a calendar year. The final regulations retain the maximum underpayment period as proposed to reflect the intent that this waiver provision apply only to minor errors that occur infrequently. The change to the correction period provides additional time, more certainty, and aligns with filing of the majority of employment tax returns. This change also removes the knowledge requirement, providing a more definitive correction period for taxpayer certainty and aiding IRS administration.

A few commenters indicated support of the use of calendar years for purposes of the waiver provision. No commenters suggested a different time period. Thus, the final regulations adopt calendar years as the appropriate period to measure failures for purposes of the waiver provisions.

VIII. Apprenticeship Requirements

A. In General

1. Scope

Under section 45(b)(8), in order to satisfy the Apprenticeship Requirements, certain requirements with respect to the construction of any qualified facility relating to labor hours, apprentice-to-journeyworker ratios, and participation by qualified apprentices must be satisfied. Under section 45(b)(8)(D)(i), a taxpayer is not treated as failing to satisfy the Apprenticeship Requirements in section 45(b)(8) if: (i) the taxpayer satisfies the Good Faith Effort Exception, or (ii) in the case of any failure by the taxpayer to satisfy the Labor Hours Requirement under section 45(b)(8)(A) and the Participation Requirement under section 45(b)(8)(C), the taxpayer makes a penalty payment to the IRS under the Apprenticeship Cure Provision.

Proposed § 1.45–8(a) generally would have provided that a taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6)(B)(iii) with respect to any qualified facility must satisfy the requirements of section 45(b)(8) and proposed § 1.45–8. Proposed § 1.45–

8(b), (c), and (d) would have provided the Labor Hours Requirement, the Ratio Requirement, and the Participation Requirement, respectively. Proposed § 1.45–8(e) would have detailed exceptions to the Apprenticeship Requirements, enabling the taxpayer to be deemed to have satisfied the Apprenticeship Requirements if the taxpayer has either made a good faith effort to meet the Apprenticeship Requirements as described in proposed § 1.45–8(e)(1) or made the penalty payment provided in proposed § 1.45–8(e)(2) for any failures to which the Good Faith Effort Exception does not apply. Proposed § 1.45–8(f) would have provided additional definitions applicable to the Apprenticeship Requirements.

Section 45(b)(8) imposes the Apprenticeship Requirements with respect to the construction of any qualified facility. As discussed in Section VI. of this Summary of Comments and Explanation of Revisions, the final regulations clarify that the qualified facility for both the Prevailing Wage Requirements and the Apprenticeship Requirements is defined as a qualified facility under section 45.

Commenters asked whether the Apprenticeship Requirements applied to work performed on a qualified facility after the facility is placed in service. Commenters asserted that the statutory text supports limiting the Apprenticeship Requirements to the construction of the qualified facility. Many commenters pointed to the explicit language in section 45(b)(7)(A)(ii) applying the Prevailing Wage Requirements to alteration and repair activities in the 10-year period after a facility is placed in service, and they stated that there is no similar language in section 45(b)(8) applying the Apprenticeship Requirements to alteration and repair activities for the period after a facility is placed in service. Commenters also pointed out the impracticality of applying the Apprenticeship Requirements to alteration and repair activities after a facility is placed in service. Commenters emphasized that repairs to facilities already in service usually must be made as quickly as possible. They indicated that such repairs are often a short-term project, and requesting, hiring, and onboarding qualified apprentices consistent with the Labor Hours Requirement would cause costly delays. Commenters stated that during large power outages and other emergencies, energy-production facilities are primarily focused on returning power to customers in as timely and efficient a manner as possible.

While there is some ambiguity in the statutory text regarding whether the Apprenticeship Requirements apply to the alteration or repair of a qualified facility after it is placed in service, the more natural reading of section 45(b)(8) supports the interpretation of the commenters that the Apprenticeship Requirements only apply to the construction of a qualified facility. Under this reading, alterations and repairs occurring while a facility is being constructed would be subject to the Apprenticeship Requirements, but those occurring after the facility is placed in service would not.

Section 45(b)(7) is clear that the Prevailing Wage Requirements apply to two distinct periods with respect to the construction, alteration, or repair of a qualified facility: (i) construction under section 45(b)(7)(A)(i); and (ii) alteration or repair for any portion of a taxable year that is within the 10-year period beginning on the date the qualified facility is placed in service under section 45(b)(7)(A)(ii). Conversely, section 45(b)(8) provides requirements that apply only with respect to the construction of any qualified facility. The lack of any explicit language in section 45(b)(8) with respect to alterations or repairs during the 10-year period after a facility is placed in service, as is seen in section 45(b)(7), suggests that the Apprenticeship Requirements do not apply after a facility is placed in service.

This conclusion is also supported by the specific language in the Apprenticeship Requirements. The applicable percentage under the Labor Hours Requirement in section 45(b)(8)(A) applies to the total labor hours of the construction, alteration, or repair work performed with respect to construction of the qualified facility. This language suggests that although hours spent on alteration and repair work can be part of the calculation used to determine whether the Labor Hours Requirement is satisfied, the requirement only applies to the construction of the qualified facility and not after it is placed in service. Similar language is used in section 45(b)(8)(C) in which the Participation Requirement is limited by the phrase “with respect to the construction of the facility.” Together, the language of these provisions suggests that taxpayers, contractors, and subcontractors may perform alteration and repair work that would be subject to the Apprenticeship Requirements, but that obligation only applies during construction and not after the facility is placed in service. The final regulations have been amended to confirm that the

Apprenticeship Requirements apply only to the construction of the qualified facility including alteration and repair work that is performed prior to the facility being placed in service, and not to alteration or repair work occurring after the facility is placed in service.

2. Labor Hours Requirement

Section 45(b)(8)(A)(i) provides that “[t]axpayers shall ensure that, with respect to the construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility shall, subject to [section 45(b)(8)(B)], be performed by qualified apprentices.” This rule is referred to as the Labor Hours Requirement.

For purposes of the Labor Hours Requirement, section 45(b)(8)(A)(ii) provides that the applicable percentage is: (i) 10 percent in the case of a qualified facility the construction of which begins before January 1, 2023; (ii) 12.5 percent in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024; and (iii) 15 percent in the case of a qualified facility the construction of which begins after December 31, 2023. Section 45(b)(8)(E)(i) provides that the term “labor hours” means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor, and excludes any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).

Commenters recommended that the final regulations clarify that there is no minimum amount of time that a qualified apprentice must be registered or employed in order to count the qualified apprentice’s work towards the labor hours requirement. The statute does not impose a minimum time period, and the Treasury Department and the IRS have determined that any additional requirement would not be in furtherance of the IRA or in the interest of sound tax administration. Thus, the final regulations do not require a minimum number of hours worked before labor hours count toward the total labor hours performed by a qualified apprentice.

Commenters requested that the final regulations provide additional guidance regarding how to calculate the total

labor hours and the applicable percentage. Specifically, a few commenters requested guidance on the period of time the total labor hours requirement encompasses and when the applicable percentage should be calculated. Similarly, another commenter asked whether total labor hours should be calculated on a trade-by-trade basis or by aggregating all contractors’ labor hours. A commenter stated that one of the examples in the Proposed Regulations seemed to imply that the Labor Hour Requirement apply to each contractor and subcontractor involved in the construction, alteration, or repair of a covered facility, rather than the aggregate labor hours for the construction project. One commenter requested that the final regulations clarify that the labor hours calculation does not include hours worked by contractors with fewer than four employees. Another commenter asked whether on-the-job training hours worked by qualified apprentices at locations other than the location of the facility count for purposes of the Labor Hours Requirement.

Consistent with the statutory language in section 45(b)(8)(A)(i), the final regulations clarify that the Labor Hours Requirement applies to the construction of a facility, not on a contractor-by-contractor or trade-by-trade basis. The final regulations further clarify that taxpayers determine whether the Labor Hours Requirement has been satisfied by aggregating all labor hours worked by laborers and mechanics on the construction of the facility (including those hours worked by contractors with fewer than four employees), from the beginning of construction through the time the facility is placed in service and calculating whether the applicable percentage of those labor hours was worked by qualified apprentices. Accordingly, taxpayers, contractors, and subcontractors will need to keep track of labor hours from the beginning of the construction of the facility until the project or facility is placed in service. Additionally, since the statute requires not less than the applicable percentage of total labor hours of construction, alteration, or repair work with respect to the qualified facility be performed by qualified apprentices, on-the-job training hours worked by qualified apprentices at a location other than the location of the facility do not count for purposes of the Labor Hours Requirement. Training hours of qualified apprentices at the location of the facility that involve the performance of construction, alteration, or repair work with respect to the qualified

facility count towards the labor hours performed by qualified apprentices for purposes of the Labor Hours Requirement. The final regulations provide examples to illustrate these calculations.

One commenter asked whether the hours worked by a working foreperson are included in the total number of labor hours in calculating the applicable percentage for purposes of the Labor Hours Requirement. One commenter requested guidance on whether a subcontractor, who only had working foremen on site to complete a project, and no qualified apprentices, would be considered to have worked zero labor hours and would not be subject to any penalties. The Proposed Regulations would have provided that working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties, and who do not meet the criteria for exemption of 29 CFR part 541, are considered laborers and mechanics for the time spent conducting laborer and mechanic duties for purposes of the Prevailing Wage Requirements. As discussed in Section VII.C.1. of this Summary of Comments and Explanation of Revisions, the final regulations retain this rule. The Proposed Regulations also would have provided that the hours worked by forepersons, regardless of whether they are considered working forepersons for purposes of the Prevailing Wage Requirements are excluded from labor hours for purposes of the Labor Hours Requirement. The final regulations also retain this rule.

Commenters suggested that the regulations clarify whether the Labor Hours Requirement applies to projects with three or fewer employees. The comment seems to be asking whether the Labor Hours Requirement applies if the Participation Requirement does not apply. The two requirements are separate. Under the Participation Requirement in section 45(b)(8)(C), each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices. There is no similar minimum threshold in the Labor Hours Requirement. To satisfy the Apprenticeship Requirements, a taxpayer needs to satisfy the Labor Hours Requirement, the Ratio Requirement, and the Participation Requirement. If the Participation Requirement does not apply, the taxpayer will still need to satisfy the Labor Hours Requirement and the Ratio Requirement.

Commenters also requested guidance on the effect of the Good Faith Effort Exception with respect to the Labor Hours Requirement. The Proposed Regulations would have provided that if a taxpayer, contractor, or subcontractor qualifies for the Good Faith Effort Exception, the number of hours that the qualified apprentices would have performed had a registered apprenticeship program supplied those qualified apprentices, would have counted towards the number of labor hours performed by qualified apprentices. The Proposed Regulations included an example illustrating the interaction between the Labor Hours Requirement and the Good Faith Effort Exception. The final regulations retain this rule and example.

Commenters also inquired whether total labor hours continue to be aggregated for all work in subsequent tax years after construction has ended, or only for those labor hours resulting from covered alteration or repair work. Another commenter requested further examples illustrating the proper calculation of labor hours for the 10-year period beginning on the date the facility was originally placed in service. Because the final regulations clarify that the Apprenticeship Requirements apply only to the construction (including alterations and repairs during construction) of the qualified facility, and not to alteration or repair work occurring after the facility is placed in service, the Labor Hours Requirement does not apply after the qualified facility has been placed in service. The final regulations incorporate additional examples clarifying this rule.

Another commenter suggested that the final regulations clarify whether the hours qualified apprentices are paid as journeyworkers as a result of failing the daily Ratio Requirement count towards the Labor Hours Requirement as qualified apprentice hours or as journeyworker hours. Proposed § 1.45–8(c)(3) would have provided that any labor hours performed by any qualified apprentice in excess of the applicable apprentice-to-journeyworker ratio may not be counted as hours performed by qualified apprentices for purpose of the Labor Hours Requirement. The final regulations retain this rule and clarify that these labor hours performed by qualified apprentices in excess of the apprentice-to-journeyworker ratio will count towards the total labor hours but will not count as hours performed by qualified apprentices for the purposes of calculating the applicable percentage.

A commenter requested additional examples addressing work performed in years after the initial year of

construction. The final regulations address this comment by providing an example illustrating the calculation of the Labor Hours Requirement after the initial year of construction.

3. Ratio Requirement

Under section 45(b)(8)(B), the Labor Hours Requirement is subject to any applicable requirements for apprentice-to-journeyworker ratios of the DOL or the applicable State apprenticeship agency. Under 29 CFR part 29, registered apprenticeship programs prescribe a numeric ratio of apprentices to journeyworkers in their standards of apprenticeship.³⁴ This ratio is intended to ensure that there are enough journeyworkers to oversee the work of qualified apprentices, provide appropriate training, and maintain workplace safety. The Treasury Department and the IRS understand that the DOL and State apprenticeship agencies review and approve the prescribed ratio requirements. Proposed § 1.45–8(c)(2), would have provided that the allowable ratio of apprentices to journeyworkers on the job site in any occupation and its corresponding classification on any day must comply with the applicable apprentice-to-journeyworker ratio of the registered apprenticeship program in accordance with 29 CFR part 29. The Treasury Department and the IRS requested comments on the application of the Ratio Requirement for purposes of satisfying the Apprenticeship Requirements. Commenters generally supported the Ratio Requirement aligning with ratio requirements set by registered apprenticeship programs.

As discussed in section VII.B.4. of this Summary of Comments and Explanation of Revisions, the Proposed Regulations would have provided a reciprocity rule for purposes of the payment of applicable prevailing wage rates for qualified apprentices. The final regulations adopt the reciprocity rule under the Prevailing Wage Requirements as proposed. The comments with respect to the reciprocity rule and the need for clarity on the ratio requirement if registered apprenticeship programs supply qualified apprentices outside of the geographic area in which the program is

³⁴ On January 17, 2024, the DOL published a notice of proposed rulemaking (ETA–2023–0004) in the *Federal Register* (89 FR 3118), to revise the regulations for registered apprenticeships. Under proposed 29 CFR 29.8(a)(19) each registered apprenticeship program must have a written set of standards of apprenticeship that includes the program's specific numeric ratio of apprentices to journeyworkers. National Apprenticeship System Enhancements, 89 FR 3118, 3279 (proposed Jan. 17, 2024).

registered applies equally with respect to the Ratio Requirement under the Apprenticeship Requirements.

Accordingly, the final regulations adopt the reciprocity rule for purposes of determining the applicable ratio of apprentices to journeyworkers under the Ratio Requirement. The final regulations clarify that if more than one apprentice-to-journeyworker ratio could apply because the construction work is occurring in a geographic area where the registered apprenticeship program is not registered, the taxpayer must comply with the apprentice-to-journeyworker ratio set for the geographic area where the construction occurs.

One commenter recommended that the final regulations clarify whether taxpayers, contractors, or subcontractors must only follow the ratio requirement of a registered apprenticeship program in those States and localities that prescribe ratio requirements for private sector projects. There is no such exception under the Ratio Requirement, and therefore the final regulations do not adopt this suggestion.

One commenter suggested that registered apprenticeship programs in some States may have a difficult time supplying enough qualified apprentices to meet the applicable apprentice-to-journeyworker ratios. The comment is inconsistent with the general application of apprenticeship ratio requirements. The Treasury Department and the IRS understand from the DOL that ratio requirements of registered apprenticeship programs that are reviewed and approved by the DOL and State apprenticeship agencies do not prescribe a certain number of qualified apprentices at a job site. Instead, they prescribe the number of journeyworkers required for each qualified apprentice that is on a job site on a given day. If on a particular day there are no qualified apprentices scheduled to work, there is no ratio requirement to adhere to. Additionally, comments regarding substantive ratio requirements set by registered apprenticeship programs and reviewed and approved by the DOL and State apprenticeship agencies are outside the scope of these final regulations.

One commenter suggested that the final regulations should incorporate the DOL regulations at 29 CFR part 29 to account for the fact that collective bargaining agreements may prohibit employers from abiding by the Ratio Requirement. The commenter was concerned that contractors may be faced with conflicting obligations and that taxpayers may be required to pay penalties as a result of negotiations outside of the taxpayer's control. The

Treasury Department and the IRS understand that collective bargaining agreements may have terms that prohibit the use of apprentice-to-journeyworker ratios established as part of a registered apprenticeship program; however, section 45(b)(8)(B) provides that the Labor Hours Requirement is subject to the apprentice-to-journeyworker ratios of the DOL or the applicable State apprenticeship agency. The Treasury Department and the IRS decline to provide a rule in the final regulations that is contrary to this statutory requirement. Changes to the ratio requirements that are approved by the DOL OA or applicable State apprenticeship agencies as part of the standards for registered apprenticeship programs under 29 CFR part 29 are outside the scope of these final regulations.

The Proposed Regulations would have provided that the applicable ratio established by the registered apprenticeship program would need to be satisfied each day during construction, alteration, or repair of the qualified facility for which qualified apprentice labor hours are being claimed. Some commenters stated that it would be administratively challenging to comply with the Ratio Requirement each day. One commenter suggested that the apprenticeship-to-journeyworker ratio be measured over a 30-day time period. One commenter suggested providing a safe harbor for taxpayers who are able to meet the relevant apprenticeship-to-journeyworker ratio requirement for at least 90 percent of the working days of a construction project. Additionally, a commenter requested guidance on the effect on taxpayers' responsibility to meet applicable apprenticeship-to-journeyworker ratios if a registered apprenticeship program is unable to supply the necessary qualified apprentices requested by the taxpayer. At least one commenter stated that applying the Ratio Requirement on a daily basis aligns with industry custom.

The Treasury Department and the IRS recognize that there may be scheduling conflicts or other issues that may make it difficult to meet the Ratio Requirement. Under 29 CFR 29.5, registered apprenticeship programs must have a ratio requirement as part of their program standards. According to the DOL, it is industry practice for registered apprenticeship programs to set daily ratio requirements to ensure the safety and welfare of the apprentices and properly oversee the work of apprentices, and requiring different ratios under the final regulations could be administratively challenging and

confusing. Additionally, a daily requirement is needed to determine whether a qualified apprentice may be paid at a rate less than the prevailing rate for work performed that day as explained in Section VII.B.4. of this Summary of Comments and Explanation of Revisions. Accordingly, the final regulations confirm that the Ratio Requirement applies each day.

One commenter requested that the final regulations require that registered apprenticeship programs identify and publish their apprentice-to-journeyworker ratios. Based on consultations with the DOL, the Treasury Department and the IRS understand that apprentice-to-journeyworker ratios of individual registered apprenticeship programs are not publicly available. However, under 29 CFR 29.5(b)(7), the ratio of apprentices to journeyworkers is a part of a registered apprenticeship program's standards of apprenticeship. A registered apprenticeship program's apprentice-to-journeyworker ratio is provided to an employer when the employer joins a registered apprenticeship program and agrees to abide by the standards of apprenticeship under 29 CFR part 29. The DOL regulates registered apprenticeship programs, and requests to impose requirements on registered apprenticeship programs is outside the scope of these final regulations.

4. Participation Requirement

Under section 45(b)(8)(C), each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform that work. The Proposed Regulations would have provided that the Participation Requirement would be satisfied as long as the taxpayer, contractor, or subcontractor employs one or more qualified apprentices to perform work on the facility and this requirement would not be a daily requirement. Additionally, the Proposed Regulations would have clarified that it would be the responsibility of the taxpayer to ensure that any contractor or subcontractor with four or more employees who perform work on the facility has hired one or more qualified apprentices. The preamble to the Proposed Regulations explained that the Treasury Department and the IRS proposed to interpret the Participation Requirement as designed to prevent taxpayers from satisfying the Labor Hours Requirement by only hiring

qualified apprentices to perform one type of work and instead encourages taxpayers to use qualified apprentices across the full range of work performed with respect to the facility.

Commenters requested clarification on how to determine whether a taxpayer, contractor, or subcontractor employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility. One commenter sought confirmation that the Participation Requirement does not apply on a daily basis. Commenters specifically requested clarification on whether the number of employees counted in determining whether the Participation Requirement applies are only those employed in the construction of the facility at the same time and at the same location.

Under section 45(b)(8)(C), the Participation Requirement applies if the taxpayer, contractor, or subcontractor employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility. It does not require employment of four individuals in the construction of the qualified facility at the same time or at the same location. The final regulations clarify that the Participation Requirement applies if the taxpayer, contractor, or subcontractor employ four individuals in the construction of the qualified facility at any time during the construction, regardless of whether they are employed at the same location or at the same time.

Commenters suggested raising the number of employees that are required for the Participation Requirement to apply so that qualified apprentices will only need to be employed on larger projects with more resources. Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform such work. The final regulations adhere to the statutory requirement under section 45(b)(8)(C).

5. Other General Apprenticeship Issues

Section 45(b)(8)(A) provides, in relevant part, that taxpayers must ensure that not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work with respect to such facility are performed by qualified apprentices. Consistent with this statutory provision, the Proposed Regulations would have provided that the taxpayer would be

solely responsible for ensuring that the Apprenticeship Requirements are satisfied. Some commenters stated that this provision is burdensome on taxpayers because it makes them responsible for the hiring decisions of contractors and subcontractors. Specifically, commenters were concerned that taxpayers may fail to satisfy the Apprenticeship Requirements if a contractor does not hire a sufficient number of qualified apprentices.

The statute requires that the taxpayer ensure that the applicable percentage of total labor hours are performed by qualified apprentices, irrespective of which entity employs the qualified apprentices. If a contractor or subcontractor does not comply with the Labor Hours Requirement, the taxpayer retains the opportunity to cure that failure by paying the penalty described under section 45(b)(8)(D)(i)(II). Thus, subject to the Participation Requirement, the taxpayer retains some flexibility in ensuring that the Apprenticeship Requirements are satisfied.

One commenter suggested that the final regulations require taxpayers to collect and audit their contractor and subcontractors' requests for qualified apprentices. Taxpayers may establish procedures to help ensure their compliance with the Apprenticeship Requirements. Those procedures may include regularly reviewing the qualified apprentice hiring practices of contractors and subcontractors or including requirements to hire qualified apprentices in contracts. Whether a taxpayer regularly reviewed contractors' and subcontractors' use of qualified apprentices is a factor in determining intentional disregard.

A commenter stated that depending on a construction project's geographic access to registered apprenticeship programs, it could be impractical for some smaller contractors to maintain the relatively high percentage of qualified apprentices necessary to meet each of the Apprenticeship Requirements. The Participation Requirement, which does not require the hiring of qualified apprentices if a contractor does not employ four or more individuals, provides limited relief for smaller businesses and addresses potential burdens. Further, the Good Faith Effort Exception discussed in Section VIII.B.1. of this Summary of Comments and Explanation of Revisions may provide relief in those circumstances raised by commenters. Accordingly, the final regulations do not provide any additional exceptions.

Section 45(b)(8)(E)(ii) defines a qualified apprentice as an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B). For purposes of the Apprenticeship Requirements, the Proposed Regulations would have defined a qualified apprentice, in part, as an individual who is employed by the taxpayer or by any contractor or subcontractor who is participating in a registered apprenticeship program. Under the Proposed Regulations, participating in a registered apprenticeship program would have included entering into a written agreement with a registered apprenticeship program. The Proposed Regulations would have also provided that for purposes of the Prevailing Wage Requirements, an apprentice includes an individual in the first 90 days of probationary employment who has been certified by the DOL OA or a State apprenticeship agency (if appropriate) to be eligible for probationary employment as an apprentice. One commenter asked for the final regulations to clarify whether the term qualified apprentice includes those individuals in the first 90 days of probationary employment with the registered apprenticeship program, similar to how such individuals are treated as apprentices under 29 CFR 22.401. The final regulations clarify that a qualified apprentice includes those individuals in the first 90 days of probationary employment with the registered apprenticeship program because they are participating in the registered apprenticeship program.

The Proposed Regulations would have provided that pre-apprenticeship programs do not qualify as registered apprenticeship programs for purposes of section 45(b)(8) and hours worked as part of a pre-apprenticeship program would not count towards the Labor Hours Requirement. Commenters recommended that the Treasury Department and the IRS permit other programs, such as trade schools, colleges, programs run by local high schools and school districts, and other privately run, non-registered apprenticeship or workforce development programs to supply apprentices to taxpayers, contractors, or subcontractors to satisfy the Apprenticeship Requirements. Commenters asserted that permitting programs in addition to registered apprenticeship programs to supply apprentices will help ease the expected short supply of qualified apprentices

due to high demand. A commenter also explained that biogas systems are usually co-located at farms and some members in the biogas industry rely on apprenticeship programs run through local high schools and school districts, that help provide hands-on experience and develop interest for agricultural careers. The commenter suggested including those school-based apprenticeship programs if they meet certain criteria.

Although the Treasury Department and the IRS understand there may be advantages to hiring individuals through programs other than registered apprenticeship programs, the statute requires that qualified apprentices be employed by the taxpayer, contractor, or subcontractor and be participating in a registered apprenticeship program for purposes of the Apprenticeship Requirements. The final regulations adhere to the statutory requirements and the proposed rule is adopted without change.

Several commenters indicated a general concern with the lack of qualified apprentices to staff construction projects. One commenter stated that in the next five to ten years, the construction industry is bracing for hundreds of billions of dollars of additional infrastructure spending and tax incentives. The commenter was skeptical that there are sufficient registered apprenticeship programs and qualified apprentices available to meet the Apprenticeship Requirements. An additional commenter shared survey data indicating that the necessary registered apprenticeship programs have not been established in their geographic area. The same commenter also opined that there are not enough qualified apprentices currently enrolled in registered apprenticeship programs to supply a workforce capable of meeting the Labor Hour Requirements.

Comments discussing the possible shortage of qualified apprentices or registered apprenticeship programs are outside the scope of these final regulations. However, the Treasury Department and the IRS appreciate that the commenters raised these concerns and have consulted with the DOL OA regarding them. The DOL OA explained that group registered apprenticeship programs that typically place qualified apprentices with multiple employers for on-the-job training are designed to expand with demand because they typically only admit as many qualified apprentices as they have guaranteed placements for. If there are additional employers, they can admit additional qualified apprentices to their programs. The DOL OA also indicated that over

the last several years the DOL has made significant investments in the registered apprenticeship space to prepare and expand access to qualified apprentices. The DOL OA is ready to assist in the creation of new registered programs that may be needed to meet the increased demand for apprentices. Taxpayers, contractors, and subcontractors are encouraged to start their own registered apprenticeship programs to help increase the supply of qualified apprentices.

Additionally, the Good Faith Effort Exception contemplates that the supply of available qualified apprentices may not always match the demand necessary to meet the Apprenticeship Requirements and provides relief in those cases as explained in Section VIII.B.1. of this Summary of Comments and Explanation of Revisions. However, use of the Good Faith Effort Exception if there is no registered apprenticeship program that operates in the geographic location of the facility is expected to be rare because registered apprenticeship programs can operate across State and county lines and are expected to expand according to demands.

A commenter requested that the final regulations clarify that a registered apprenticeship program may only provide qualified apprentices for the specific classification(s) requested by the taxpayer. The regulation of registered apprenticeship programs is outside the scope of these final regulations. Taxpayers, contractors, and subcontractors retain flexibility in their hiring decisions, including with respect to qualified apprentices. Under these final regulations, the hours that are worked by a qualified apprentice only qualify towards the Labor Hours Requirement and the Participation Requirement to the extent the qualified apprentice is performing construction, alteration, or repair work with respect to the construction of a facility consistent with the occupation in which the qualified apprentice is training.

Another commenter claimed that the Proposed Regulations would place the responsibility to provide qualified apprentices on group sponsors of registered apprenticeship programs, thereby limiting taxpayer incentives to launch their own programs and hire qualified apprentices in other circumstances. The Proposed Regulations did not intend to restrict taxpayers, contractors, or subcontractors from developing their own registered apprenticeship programs. The final regulations clarify that taxpayers, contractors, and subcontractors have the flexibility to create their own registered apprenticeship program (within the

meaning of section 3131(e)(3)(B)) or partner with existing registered apprenticeship programs to satisfy the Apprenticeship Requirements.

Another commenter requested that the final regulations require that any funds contributed to a registered apprenticeship program must be used to train qualified apprentices. While the Treasury Department and the IRS understand that commenters want to ensure funds contributed to a registered apprenticeship program are used appropriately, this is outside the scope of the final regulations.

Several commenters requested assistance in finding registered apprenticeship programs to provide qualified apprentices to a project. The DOL OA, in collaboration with participating State apprenticeship agencies, has created an online search tool to assist taxpayers, contractors, and subcontractors in finding registered apprenticeship programs (currently <https://www.apprenticeship.gov/partner-finder>). Taxpayers, contractors, and subcontractors can search for registered apprenticeship programs by occupation or industry in a certain State, city, or zip code. Taxpayers, contractors, and subcontractors can also contact the DOL OA or their State apprenticeship agency for assistance in locating registered apprenticeship programs.

A commenter also stated that the Apprenticeship Requirements could create new challenges for taxpayers who depend on labor from other countries to help install equipment. The commenter explained that foreign contractors and subcontractors will be unable to meet the Apprenticeship Requirements because they are not permitted to hire qualified apprentices from registered apprenticeship programs. The commenter suggested that the final regulations expand the Good Faith Effort Exception to provide reasonable accommodations for taxpayers who rely on foreign companies for specific work.

The Treasury Department and the IRS understand from the DOL OA that DOL regulations governing registered apprenticeship programs do not prohibit foreign employers from hiring qualified apprentices from registered apprenticeship programs or registering an apprenticeship program, provided certain requirements are satisfied (for example, the foreign employer must have a physical presence in the United States and be legally authorized to conduct business in the United States). The DOL OA confirmed that there are several registered apprenticeship programs sponsored by foreign employers. Accordingly, the Treasury

Department and the IRS decline to provide special exceptions for taxpayers who use foreign contractors or subcontractors for specific work as the statute does not contemplate such an exception.

A commenter requested that the final regulations clarify the effect of the DOL deregistering a registered apprenticeship program. The commenter recommended that the final regulations permit taxpayers, contractors, and subcontractors to continue to pay the applicable apprenticeship prevailing wage rate if a registered apprenticeship program is deregistered, provided the taxpayer, contractor, or subcontractor can find a new registered apprenticeship program for the apprentices already employed within 90 days from the date the taxpayer, contractor, or subcontractor is notified in writing that the program was deregistered. The commenter also requested that the Treasury Department and the IRS provide an option for enrolling apprentices in registered apprenticeship programs that offer remote learning in the event a registered apprenticeship program is deregistered.

The Treasury Department and the IRS understand that programs may be deregistered by the DOL OA or the State apprenticeship agency as a result of the program's failure to follow the requirements in 29 CFR parts 29 and 30. When an apprenticeship program is deregistered, the DOL OA or State apprenticeship agency assists with transferring the apprentices to other registered apprenticeship programs. The DOL OA has indicated that deregistration is rare and the process leading up to deregistration involves ample opportunities for programs to take corrective action prior to deregistration such that there will be time for taxpayers, contractors, and subcontractors to find new registered apprenticeship programs or qualified apprentices if a program is at risk of deregistration.

The final regulations do not adopt this comment. Section 45(b)(8) requires the use of qualified apprentices participating in a registered apprenticeship program. An individual registered in an apprenticeship program that has been deregistered is no longer a qualified apprentice and the hours worked by the individual after deregistration of the program will not qualify towards the Apprenticeship Requirements. The Treasury Department and the IRS also decline to permit taxpayers, contractors, or subcontractors to pay the reduced applicable apprenticeship prevailing wage rate in

the event of deregistration as doing so would be inconsistent with the statute.

A commenter recommended that the final regulations provide guidance for situations in which the construction work outlasts the qualified apprentice's tenure with a registered apprenticeship program, because the qualified apprentice is promoted, graduates, or otherwise leaves the program. The employment of individuals who are no longer qualified apprentices for any reason will not qualify for purposes of the Apprenticeship Requirements.

Similarly, a few commenters requested guidance regarding the impact to the Apprenticeship Requirements if circumstances change in the middle of construction of a facility, such as qualified apprentice labor becoming unavailable. The Treasury Department and the IRS understand there might be situations in which qualified apprentice labor becomes unavailable, which may affect a taxpayer's ability to comply with the Labor Hours Requirement. In this situation, taxpayers may be eligible for the Good Faith Effort Exception (if those requirements are satisfied) or may cure the failure to meet the Apprenticeship Requirements by paying the prescribed penalty under section 45(b)(8)(D)(i)(II). The Good Faith Effort Exception and the Apprenticeship Cure Provision are discussed in Section VIII.B. of this Summary of Comments and Explanation of Revisions.

A commenter also suggested that in order to ensure high quality on-the-job training in registered apprenticeship programs, the final regulations should either support or require employers seeking the increased amounts of credit to be registered training agents and demonstrate their proof of status with a registered apprenticeship program. Because registered apprenticeship programs must provide supervised work experience and training on the job, the use of qualified apprentices already ensures quality on-the-job training, and the final regulations do not require taxpayers, contractors, or subcontractors to register as training agents.

B. Exceptions to the Apprenticeship Requirements

Under section 45(b)(8)(D)(i), a taxpayer is not treated as failing to satisfy the Apprenticeship Requirements in section 45(b)(8) if: (i) the taxpayer satisfies the Good Faith Effort Exception in section 45(b)(8)(D)(ii), or (ii) in the case of any failure by the taxpayer to satisfy the Labor Hours Requirement under section 45(b)(8)(A) and the Participation Requirement under section 45(b)(8)(C),

the taxpayer makes a penalty payment to the IRS.

1. Good Faith Effort Exception

Under the Good Faith Effort Exception, a taxpayer is deemed to have satisfied the Apprenticeship Requirements with respect to a qualified facility if the taxpayer has requested qualified apprentices from a registered apprenticeship program and: (i) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (ii) the registered apprenticeship program fails to respond to such request within five business days after the date on which such registered apprenticeship program received the request.

The Proposed Regulations would have provided that, generally, a taxpayer is deemed to have satisfied the Apprenticeship Requirements with respect to a request for qualified apprentices if the taxpayer, contractor, or subcontractor submitted a written request for qualified apprentices to at least one registered apprenticeship program that: (i) has a geographic area of operation that includes the location of the facility, or that can reasonably be expected to provide apprentices to the location of the facility; (ii) trains apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the facility; and (iii) has a usual and customary business practice of entering into agreements with employers for the placement of apprentices in the occupation for which they are training, pursuant to its standards and requirements. The Proposed Regulations would have further required that the request be in writing and sent electronically or by registered mail. The Proposed Regulations would have defined a registered apprenticeship program to mean a program that has been registered by the DOL OA or a recognized State apprenticeship agency pursuant 29 CFR parts 29 and 30, as meeting the basic standards and requirements of the DOL (DOL Apprenticeship Standards).

The Proposed Regulations would have provided that the Good Faith Effort Exception is specific to the request for qualified apprentices made by the taxpayer, contractor, or subcontractor, including the number of apprentice hours for which the request for apprentices has been made to a

registered apprenticeship program. Thus, the Good Faith Effort Exception would have applied to the specific portion of the request for qualified apprentices that was not responded to or denied. The Proposed Regulations would also have provided that the denial of a request for qualified apprentices would qualify for the Good Faith Effort Exception for a period of 120 days after the denial and that taxpayers, contractors, or subcontractors would be required to submit an additional request for apprentices every 120 days after a denial to continue to qualify for the Good Faith Effort Exception. The Treasury Department and the IRS requested comments on the duration of requests for qualified apprentices under the Good Faith Effort Exception.

The Treasury Department and the IRS are aware that the DOL OA, as well as State apprenticeship agencies, routinely provide technical expertise on registered apprenticeship program matters, including identifying registered apprenticeship programs and assisting employers seeking to register their own programs. The Treasury Department and the IRS requested comments on whether and how the proposed Good Faith Effort Exception might account for a situation in which a taxpayer contacts the DOL OA or the appropriate State apprenticeship agency regarding their apprenticeship request, in addition to contacting a specific registered apprenticeship program(s).

The Treasury Department and the IRS also requested comments on how the proposed Good Faith Effort Exception would align with current practices with respect to use of apprentices in the construction, alteration, or repair of facilities. In particular, the Treasury Department and the IRS requested comments on the role of collective bargaining agreements, PLAs, and other agreements to satisfy the request for apprentices under the Good Faith Effort Exception. The following sections summarize the comments received. The final regulations provide further guidance regarding the Good Faith Effort Exception and revise the Proposed Regulations in response to the comments received.

a. Content and Scope of a Request

The Proposed Regulations would have required that a request for qualified apprentices must include the proposed dates of employment, occupation of apprentices needed, location of the work to be performed, number of apprentices needed, the expected number of labor hours to be performed by the apprentices, and the name and

contact information of the taxpayer, contractor, or subcontractor requesting employment of apprentices from the registered apprenticeship program. The Proposed Regulations would have also required that the request state that the request for qualified apprentices is made with an intent to employ apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program.

Several commenters requested that the final regulations further clarify what information must be included in the request for qualified apprentices for purposes of the Good Faith Effort Exception. At least one commenter asked whether the request could estimate the dates of employment and the number of qualified apprentices needed. Commenters suggested that the final regulations require requests to explain the need for qualified apprentices and provide the exact number of qualified apprentices needed. Other commenters specifically asked that the request be required to include the name and contact information of the entity that will employ the qualified apprentices.

The final regulations retain the proposed rule requiring taxpayers, contractors, and subcontractors to include specific and detailed information concerning the qualified apprentices that are requested and the work to be performed with certain revisions to provide greater clarity for taxpayers and to strengthen the Good Faith Effort Exception. The final regulations further require that a request must identify who will employ the qualified apprentices. The Treasury Department and the IRS understand that requests for qualified apprentices will be based on projections or estimates of the work to be performed including the duration of the work and the number of hours. Nonetheless, the estimates must be consistent with the requester's intent to employ the qualified apprentices. Accordingly, the final regulations provide that requests may include reasonable estimates, and also require that the request include a statement of intent to employ qualified apprentices consistent with the hours and dates of employment included in the request.

The Treasury Department and the IRS are aware of the concerns about potential abuse of the Good Faith Effort Exception. Taxpayers, contractors, and subcontractors should be mindful that requests that lack specific details of employment or do not reflect reasonable estimates will not be considered valid requests under the final regulations. Consistent with the general rule in

§ 1.45–12 that taxpayers must maintain and preserve records sufficient to demonstrate compliance with the applicable PWA requirements, taxpayers need to keep records demonstrating the estimates included in the request were reasonable, such as projected and actual labor needs (both for journeyworkers and qualified apprentices) during the construction of the qualified facility, and any factors impacting those needs, such as apprentice utilization plans or contract requirements, as applicable.

b. Required Format of a Request

Commenters recommended that the final regulations require taxpayers to make requests for qualified apprentices in writing and by telephone. Commenters argued that adding the requirement to contact registered apprenticeship programs by telephone would ensure taxpayers, contractors, and subcontractors use forms of communication that are reasonably calculated to properly and timely notify registered apprenticeship programs of their requests.

The Treasury Department and the IRS recognize that some taxpayers, contractors, and subcontractors have ongoing relationships with registered apprenticeship programs and may request qualified apprentices from the program informally, such as by telephone. However, in administering the Good Faith Effort Exception the IRS needs to be able to verify and evaluate the request for qualified apprentices, including if the request was received by the registered apprenticeship program and whether the request included the necessary details to be considered a valid request. Accordingly, the final regulations retain the rule that a request to a registered apprenticeship program must be a written request, sent electronically or by registered mail, for purposes of the Good Faith Effort Exception. Taxpayers, contractors, or subcontractors are permitted and encouraged to contact registered apprenticeship programs in writing and by telephone, but in order to satisfy the Good Faith Effort Exception, the request must be in writing.

c. Required Recipients of a Request

A commenter stated that many employers who are signatories to collective bargaining agreements with building trades labor unions request qualified apprentices from the labor union and not from a registered apprenticeship program. The commenters indicated that this is the common practice because the labor union will have a list of qualified

apprentices who will be dispatched to the employer's job site. The commenter suggested the final regulations revise the Good Faith Effort Exception to reflect this practice. The Treasury Department and the IRS understand that this practice may occur; however, section 45(b)(8)(D)(ii) provides that requests for qualified apprentices must be made to a registered apprenticeship program. Accordingly, the Treasury Department and the IRS decline to amend the Good Faith Effort Exception to allow this alternative procedure.

The Proposed Regulations would have provided that in order to qualify for the Good Faith Effort Exception, taxpayers, contractors, or subcontractors must submit a written request for qualified apprentices to at least one registered apprenticeship program, which has a geographic area of operation that includes the location of the facility, or to a registered apprenticeship program that can reasonably be expected to provide apprentices to the location of the facility. In the preamble to the Proposed Regulations, the Treasury Department and the IRS explained that although a taxpayer only needs to submit a request to one registered apprenticeship program, depending on the size of the facility and the likelihood of multiple occupations involved in the construction of the facility, a taxpayer may need to submit a request to more than one apprenticeship program in order to meet the Good Faith Effort Exception.

Several commenters suggested that the final regulations require taxpayers to request qualified apprentices from all available registered apprenticeship programs. Other commenters requested the final regulations retain the requirement to contact at least one available registered apprenticeship program in order to meet the Good Faith Effort Exception. Given that the statute does not impose this requirement, it would be unreasonable to require taxpayers to contact all possible apprenticeship programs. The final regulations adopt the proposed rule without change. In order to qualify for the Good Faith Effort Exception, taxpayers, contractors, or subcontractors must submit a written request for qualified apprentices to at least one registered apprenticeship program. The Good Faith Effort Exception is limited to the number of qualified apprentice labor hours that are requested as part of a valid request for qualified apprentices.

A commenter requested that the final regulations clarify that taxpayers are not required to request apprentices from the same geographic area as the project. The final regulations do not require

taxpayers to use qualified apprentices from a program located in the same geographic area as the project to meet the Labor Hours Requirement. Taxpayers, contractors, or subcontractors have the flexibility to request and use qualified apprentices from any location so long as the apprentices are part of a registered apprenticeship program. However, as provided herein, in order to qualify for the Good Faith Effort Exception, taxpayers are required to request qualified apprentices from at least one apprenticeship program with a geographic area of operation that includes the geographic location of the facility.

Commenters requested additional guidance regarding how to determine those apprenticeship programs that would reasonably be expected to provide apprentices to the location of a facility. Some commenters suggested making this requirement less ambiguous by requiring taxpayers, contractors, and subcontractors to contact all registered apprenticeship programs within a certain distance from the project location. One commenter suggested that taxpayers should be required to accept apprentices from a "sister" program either from within the same State or from one or more States adjacent to the State in which the construction is occurring. Other commenters recommended being able to unconditionally use local registered apprenticeship programs. A commenter also recommended clarifying the expectations for nonunion contractors to use apprentices from union-affiliated programs if nonunion programs are not locally available.

The Treasury Department and the IRS agree that additional clarification is needed on which registered apprenticeship program must be contacted to satisfy the Good Faith Effort Exception. The proposed rule was intended to require sending the request to a registered apprenticeship program that would ordinarily provide apprentices to the area where the facility is located. The Treasury Department and the IRS have determined that this prerequisite is sufficiently addressed in the requirement that the registered apprenticeship program have a geographic area of operation that includes the location of the facility, because those registered apprenticeship programs can reasonably be expected to provide apprentices to the area where the facility is located. Accordingly, the proposed requirement to contact a registered apprenticeship program that can reasonably be expected to provide

apprentices to the location of the facility is not retained in the final regulations. The final regulations clarify that the geographic area of operation of a registered apprenticeship program has the same meaning as geographic area and locality for purposes of the Prevailing Wage Requirements. In most cases, this will mean that the registered apprenticeship program operates in the county, independent city, or other civil subdivision of the State in which the facility is located, regardless of where the registered apprenticeship program is physically located.

Commenters requested guidance with respect to the application of the Good Faith Effort Exception if there is no registered apprenticeship program with a geographic area of operation that includes the location of the facility or that can be reasonably expected to provide apprentices to a project. A commenter also requested guidance in situations in which certain trades lacked qualified apprentices either locally or nationally. Commenters also requested clarification on how to determine that there are no registered apprenticeship programs in the geographic area or that can be reasonably expected to provide apprentices to a project. Other commenters recommended requiring taxpayers, contractors, or subcontractors to seek assistance from the DOL OA or State apprenticeship agency if the taxpayer is having trouble locating a registered apprenticeship program with a geographic area of operation that includes the location of the facility in order to qualify for the Good Faith Effort Exception.

Although the Treasury Department and the IRS expect this situation to be rare, the final regulations address the application of the Good Faith Effort Exception in the absence of a registered apprenticeship program with an area of operation that includes the location of the facility. The final regulations provide that if there is no registered apprenticeship program with a geographic area of operation that includes the location of the facility, taxpayers will be deemed to satisfy the Good Faith Effort Exception for the apprentices they (or the contractor or subcontractor) would have requested for that occupation.

Taxpayers, contractors, and subcontractors should keep records sufficient to substantiate that there are no existing registered apprenticeship programs with a geographic area of operation that includes the facility at the time the request would have been made, as well as documentation of the requests for apprentices that would have been made, including the specific work

and hours that would have been performed by the apprentices if a registered apprenticeship program were available. Taxpayers are also able, but not required for the purposes of the Good Faith Effort Exception, to create their own registered apprenticeship programs.

Because registered apprenticeship programs can operate across State and county lines, determining that a registered apprenticeship program does not have a geographic area of operation that includes the location of the facility may necessitate contacting the registered apprenticeship program to determine its geographic area of operation. Taxpayers should also consider contacting the DOL OA or relevant State apprenticeship agency for assistance in locating registered apprenticeship programs and documenting that no registered apprenticeship programs are available. Examples of evidence that no registered apprenticeship programs were available could include written confirmation from registered apprenticeship programs that they do not have a geographic area of operation that includes the location of the facility or confirmation from the DOL OA or the relevant State apprenticeship agency that there are no existing registered apprenticeship programs with a geographic area of operation that includes the facility.

Commenters also requested guidance on how a taxpayer, contractor, or subcontractor who sponsors its own registered apprenticeship program and employs qualified apprentices would qualify for the Good Faith Effort Exception. The final regulations clarify that if a taxpayer, contractor, or subcontractor is a registered apprenticeship program sponsor and there are no available qualified apprentices in the registered apprenticeship program sponsored by the taxpayer, contractor, or subcontractor, the taxpayer, contractor, or subcontractor may qualify for the Good Faith Effort Exception by demonstrating that it made a request to another registered apprenticeship program (and such request was denied or not responded to within five business days) or by establishing that there are no other registered apprenticeship programs with an area of operation that includes the location of the facility.

One commenter stated that it is customary for some employers who are signatories to collective bargaining agreements to hire qualified apprentices through the union instead of by contacting a registered apprenticeship program. The commenter requested the final rule clarify that this practice is

permissible. The final regulations do not adopt this suggestion. The Treasury Department and the IRS recognize that an employer may not directly contact a registered apprenticeship program for qualified apprentices if the employer is a signatory to a collective bargaining agreement with a labor organization. However, for purposes of satisfying the Good Faith Effort Exception, the taxpayer must have requested qualified apprentices from a registered apprenticeship program and not a labor organization.

In the preamble to the Proposed Regulations, the Treasury Department and the IRS requested comments on whether and how the proposed Good Faith Effort Exception might take into account a situation in which a taxpayer contacts the DOL OA or the appropriate State apprenticeship agency regarding their apprenticeship request, in addition to contacting a specific registered apprenticeship program or programs. Some commenters requested that the final regulations clarify that a taxpayer's outreach to the DOL OA or a State apprenticeship agency has no bearing on whether a taxpayer qualifies for a Good Faith Effort Exception. The Treasury Department and the IRS have determined that taxpayers, contractors, or subcontractors are not required to contact the DOL OA or State apprenticeship agency to satisfy the Good Faith Effort Exception. However, as noted previously, it is recommended that taxpayers, contractors, and subcontractors contact the DOL OA or a State apprenticeship agency if they have difficulty locating a registered apprenticeship program. Additionally, the final regulations provide that evidence that the taxpayer, contractor, or subcontractor contacted the DOL OA or a State apprenticeship agency for assistance will be considered in determining whether taxpayers, contractors, or subcontractors acted with intentional disregard if the Good Faith Effort Exception does not apply.

d. Timing of a Request

Commenters asked that the final regulations clarify when a request must be made in order to satisfy the Good Faith Effort Exception. Several commenters recommended that requests should be made within a certain time before the requested qualified apprentices are needed. Some commenters indicated that in the absence of a temporal requirement, some taxpayers, contractors, or subcontractors may make last-minute requests for qualified apprentices. The commenters asserted that it may be very difficult or impossible for a registered

apprenticeship program to respond to a request for qualified apprentices without adequate time to staff the request. Some commenters suggested that there may be a loophole allowing for the application of the Good Faith Effort Exception in situations in which it was not intended to apply if the final regulations do not impose a temporal requirement. Commenters proposed time periods that ranged from five days before qualified apprentices are needed (if a taxpayer, contractor, or subcontractor has a pre-existing relationship with the registered apprenticeship program) to 90 days before qualified apprentices are needed in the absence of a pre-existing relationship. Several commenters suggested that requests should be required 10 to 14 days before qualified apprentices are expected to start work on the project.

The DOL OA has indicated that typical apprenticeship cycles in construction involve at least 2,000 hours of on-the-job training and at least 144 hours of related instruction for each year of the apprenticeship program. According to the DOL OA, registered apprenticeship programs in the construction industry typically hire qualified apprentices in cohorts, and advance notice is needed to allow the registered apprenticeship program adequate time to supply the requested qualified apprentices within the timeframe needed.

The Treasury Department and the IRS agree that in order to satisfy the Good Faith Effort Exception, the initial request for qualified apprentices must be made with enough advance notice to allow registered apprenticeship programs time to respond. The Treasury Department and the IRS also recognize that given the nature of construction projects, and the desire to complete projects on time, a shorter timeframe may be appropriate for any subsequent requests once construction is underway. Accordingly, the final regulations require that taxpayers, contractors, and subcontractors must make an initial request for qualified apprentice(s) from a registered apprenticeship program at least 45 days before the qualified apprentice is requested to begin work on the facility so that registered apprenticeship programs have adequate time to plan for the anticipated need. The final regulations also clarify that to satisfy the Good Faith Effort Exception, any subsequent requests to the same registered apprenticeship program must be made no later than 14 days before qualified apprentices are requested to begin work on the facility.

The Treasury Department and the IRS received numerous comments regarding the 120-day period for which the denial or nonresponse of a request for qualified apprentices is considered to satisfy the Good Faith Effort Exception and the requirement for taxpayers to submit additional requests for qualified apprentices to continue to satisfy the Good Faith Effort Exception at the end of the 120-day period. Some commenters suggested eliminating the requirement to submit additional requests or extending the time before an additional request needs to be made from 120 days to one year, noting that the 120-day period could be impractical or burdensome, create uncertainty, and that it might not increase the hiring of qualified apprentices. Several commenters asserted that the 120-day period and the requirement to submit additional requests lacked a statutory basis, because the statutory text of the Good Faith Effort Exception in section 45(b)(8)(D) does not prescribe or mention any 120-day period and does not require any renewal by the taxpayer of its request for a qualified apprentice in order to be deemed to satisfy the Apprenticeship Requirements. Other commenters suggested that the 120-day period be shortened to better align with project timelines for subcontractors who typically conclude their work on a project well within the 120-day window.

Commenters also asked that the final regulations clarify if subsequent requests have to be made to the same registered apprenticeship program and if there is a limit on the number of times an additional request needed to be made in order to satisfy the Good Faith Effort Exception. Additionally, a commenter suggested that the final regulations require follow-up requests for qualified apprentices to include the names of any registered apprenticeship programs the taxpayer previously contacted for qualified apprentices. Commenters also asked whether the Labor Hours Requirement applied if taxpayers, contractors, or subcontractors met the Good Faith Effort Exception for 120 days, and subsequently obtained qualified apprentices in response to an additional request made after the expiration of the 120-day period. If the Labor Hours Requirement applied in this scenario, the commenter requested guidance on how to determine if a taxpayer satisfied the Labor Hours Requirement under these circumstances.

The Treasury Department and the IRS agree with the comments indicating that the 120-day period introduces unnecessary uncertainty with respect to labor supply and costs. A request that is

initially denied for lack of available qualified apprentices that is later accepted pursuant to a renewed request after only 120 days could disrupt staffing decisions. Moreover, the Treasury Department and the IRS acknowledge that a requirement to submit additional requests after 120 days could increase burdens in cases in which businesses may not have the staff or staffing flexibility to comply with a requirement for multiple, ongoing requests. However, the Treasury Department and the IRS also recognize the value in prescribing the duration of requests to prevent the Good Faith Effort Exception from allowing the Apprenticeship Requirements to be avoided in their entirety if qualified apprentices will likely be available for work at some time during the lifespan of a construction project as the supply adjusts to demands.

Based on the comments received and in consultation with the DOL, the Treasury Department and the IRS have determined that the maximum duration of a request for qualified apprentices is 365 days (366 days in case of a leap year). The final regulations have been revised to provide that taxpayers must submit additional requests 365 days (366 days in case of a leap year) after the denial of a previous request to continue to satisfy the Good Faith Effort Exception. The final regulations also clarify that the annual duration applies if a taxpayer, contractor, or subcontractor is not able to locate a registered apprenticeship program with an area of operation that includes the location of the facility.

Extending the maximum duration of requests for qualified apprentices to an annual period will allow employers sufficient time to assess future work needs appropriate for qualified apprentices without causing uncertainty for existing staff and unexpected costs that might otherwise result if requests were required on a more frequent basis. It also allows sufficient time for the supply of qualified apprentices to adjust to the construction demands of the location of the facility through the registration of new apprenticeship programs and recruitment of qualified apprentices into those programs. The final regulations retain the rule that requests for purposes of the Good Faith Effort Exception must be specific as to the dates of employment and the expected number of hours the qualified apprentices are needed with the intent to employ the qualified apprentices consistent with the request. Taxpayers, contractors, or subcontractors making general requests that lack an intent to employ the qualified apprentices

consistent with the request would not satisfy the Good Faith Effort Exception. The final regulations also clarify that requests for qualified apprentices do not need to be made to the same registered apprenticeship program that received and denied an earlier request.

The final regulations also include an example in response to the request for clarification on how the Labor Hours Requirement applies if a taxpayer satisfies the Good Faith Effort Exception for one 365-day period (or 366-day period in the case of a leap year), and then obtains qualified apprentices in response to an additional request for qualified apprentices that is made later.

e. Definition of a Response

The Proposed Regulations would have provided that an acknowledgement, whether in writing or otherwise by a registered apprenticeship program, of receipt of the request is a sufficient response for purposes of the Good Faith Effort Exception. Several commenters requested that the final regulations modify this proposed requirement and provide that open-ended and non-substantive replies do not constitute a response for purposes of satisfying the Good Faith Effort Exception. Commenters were concerned that if a non-substantive acknowledgement is treated as a response, taxpayers could be foreclosed from relying on the Good Faith Effort Exception and be unable to satisfy the Apprenticeship Requirements despite legitimate attempts to do so. They also stated that the proposed rule could lead to uncertainty for taxpayers and indefinitely delay construction while taxpayers attempt to comply with the Apprenticeship Requirements. Another commenter requested that the final regulations require the acknowledgment to be in writing, consistent with the requirement that the request must be in writing.

The Treasury Department and the IRS agree with the concerns raised by the commenters. Accordingly, the final regulations provide that a response is a substantive written reply that agrees, in part or in whole, to the specific requirements in the taxpayer's, contractor's, or subcontractor's request. Automated or other non-substantive responses or acknowledgments are not responses for purposes of the Good Faith Effort Exception.

One commenter suggested the final regulations clarify that if a program replies with a non-substantive response, the taxpayer is not required to follow up with the registered apprenticeship program for a more specific response. The Treasury Department and the IRS

agree that additional guidance is needed on the procedures after a taxpayer, contractor, or subcontractor makes an initial request to a registered apprenticeship program. The final regulations clarify that, for purposes of the Good Faith Effort Exception and subject to the annual duration of a request, a taxpayer, contractor, or subcontractor does not need to follow up with the registered apprenticeship program after an initial request is made or after receipt of a non-substantive response.

Although follow-up requests are not required for purposes of the Good Faith Effort Exception, the Treasury Department and the IRS encourage taxpayers, contractors, and subcontractors to regularly follow up with registered apprenticeship programs regarding requests for qualified apprentices, and the final regulations clarify that evidence that this occurred is a factor the IRS will consider in determining whether there is intentional disregard of the Apprenticeship Requirements if the Good Faith Effort Exception does not apply.

f. Denial of a Request

The Proposed Regulations would have provided that a denial of a request means that the registered apprenticeship program denied the request in its entirety. The Proposed Regulations would have further provided that a registered apprenticeship program's response that it could partially fulfill a request in the occupation(s) for which it trains apprentices would not constitute a denial of the request with respect to the parts of the request that could be fulfilled. Commenters suggested that the final regulations require taxpayers to accept all qualified apprentices offered by a registered apprenticeship program, even if a registered apprenticeship program is only partially able to meet a request. The final regulations clarify that partial denials may also serve as a valid basis for the Good Faith Effort Exception with respect to the portion denied, provided that the taxpayer, contractor, or subcontractor hires the qualified apprentices that are available for the construction as provided by the registered apprenticeship program in its response. The final regulations also clarify through an example that a denial that follows an initial acceptance and is received prior to the start of the requested work (for example, if a registered apprenticeship program indicates it can provide qualified apprentices to a project and is subsequently unable to fulfill the request) may also serve as a valid basis for the Good Faith Effort Exception.

Commenters also asked if the Labor Hours Requirement is proportionately reduced in the event of a partial denial. The Treasury Department and the IRS understand the need for clarification on the interaction between the Labor Hours Requirement and the Good Faith Effort Exception. An example in proposed § 1.45–8(e)(1)(ii)(F) illustrates that if a request is partially denied, the part of the request that was denied would qualify for the Good Faith Effort Exception. As proposed, the example would have stated the number of qualified apprentice labor hours that would qualify for the Good Faith Effort Exception, but it did not clearly indicate how these hours are treated. The final regulations contain a revised example clarifying that there is no proportionate reduction of the Labor Hours Requirement. Instead, the qualified apprentice labor hours that qualify for the Good Faith Effort Exception are treated as labor hours performed by qualified apprentices.

Commenters requested that the final regulations clarify how to determine the date on which a registered apprenticeship program received a request for purposes of the Good Faith Effort Exception. One commenter suggested that the date of receipt should be determined by a proof of receipt from a delivery service. As explained in Section VIII.B.1.b. of this Summary of Comments and Explanation of Revisions, for purposes of the Good Faith Effort Exception, requests for qualified apprentices must be in writing and sent electronically or by registered mail. The final regulations provide that date of receipt of the request is the date an email request is sent to the registered apprenticeship program, or the date of delivery shown on a receipt from the registered mail delivery.

Under section 45(b)(8)(D)(ii)(I), in order to satisfy the Good Faith Effort Exception, a denial of a request for qualified apprentices cannot be “the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program.” The Proposed Regulations reiterated this requirement. The preamble to the Proposed Regulations provided further that “if a registered apprenticeship program requires a requesting employer to enter into an agreement with the registered apprenticeship program, then a denial of the request because the employer refused to enter into the agreement

would not be a valid denial for purposes of the Good Faith Effort Exception.”

A few commenters requested that the final regulations confirm that the established standards and requirements of the registered apprenticeship program refer to those requirements included in the DOL Apprenticeship Standards. Commenters asserted that requiring taxpayers to comply with requirements other than those necessary to comply with the DOL Apprenticeship Standards would unfairly restrict a taxpayer's ability to negotiate contract terms with a registered apprenticeship program. Some commenters were also concerned that the proposed rule would require taxpayers, contractors, and subcontractors who are not parties to collective bargaining agreements or PLAs to enter into these agreements in order to comply with a union registered apprenticeship program's standards and requirements. Commenters stated that non-union contractors generally do not employ qualified apprentices enrolled in union sponsored registered apprenticeship programs, and they requested confirmation that this rule would not require them to do so. A commenter also requested guidance concerning what remedies are available to taxpayers if there is a conflict between standards imposed by an apprenticeship program registered by the DOL OA and an apprenticeship program registered by a State apprenticeship agency. The commenter requested clarification that taxpayers may choose to request and employ qualified apprentices from either registered apprenticeship program.

The Treasury Department and the IRS agree that the final regulations should further clarify what established standards and requirements means. Under section 45(b)(8)(D)(ii) the denial cannot be a result of a failure to comply with the “established standards and requirements” of a registered apprenticeship program (as defined in section 3131(e)(3)(B)). Section 3131(e)(3)(B) requires a registered apprenticeship program to satisfy the DOL Apprenticeship Standards.

Section 29.5 of the current DOL Apprenticeship Standards provides the standards of apprenticeship that an apprenticeship program must satisfy to be eligible for approval and registration by the DOL OA or a State apprenticeship agency.³⁵ Under 29 CFR 29.5(a), the apprenticeship program must have “an organized, written plan

³⁵ On January 17, 2024, the DOL released an NPRM proposing to update the DOL Apprenticeship Standards contained in 29 CFR part 29. See 89 FR 3118.

(program standards) embodying the terms and conditions of employment, training, and supervision of one or more apprentices in an apprenticeable occupation, as defined in this part, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.” Section 29.5(b) lists 23 different provisions that the program standards must address, including the employment and training of the apprentice, the term of apprenticeship and the minimum qualifications required by a sponsor for persons entering the apprenticeship program. The Treasury Department and the IRS have determined that the use of the phrase “established standards” in section 45(b)(8)(D)(ii)(I) of the Code should be construed as a reference to the DOL Apprenticeship Standards referenced by section 3131(e)(3)(B) of the Code and contained in 29 CFR parts 29 and 30. Based on consultation with the DOL OA, the Treasury Department and the IRS understand that the DOL also refers to the established standards as the DOL Apprenticeship Standards that are applicable to—and required of—all employers who wish to join the registered apprenticeship program for the purpose of employing apprentices.

However, Congress’s use of the phrase “established standards and requirements” captures more than the DOL Apprenticeship Standards. In order to give meaning to the words “and requirements,” terms and conditions beyond those contained in the DOL Apprenticeship Standards (those that are necessary for DOL approval) must not be rejected by taxpayers, contractors, and subcontractors for purposes of the Good Faith Effort Exception. Whether additional requirements may be imposed by the registered apprenticeship program will depend, in part, on what the DOL allows the registered apprenticeship program to require. The DOL is the agency responsible for regulating registered apprenticeship programs, and the DOL determines the permissible standards and requirements of a registered apprenticeship program. The DOL OA has indicated it is important for efficient oversight and administration of registered apprenticeship programs that these programs not be required to establish separate standards and requirements for the purposes of the IRA.

The Treasury Department and the IRS appreciate the importance of the DOL’s management of the registered apprenticeship program and the DOL’s well-established understanding of what constitutes established standards and requirements for the registered

apprenticeship programs that the DOL is responsible for overseeing and approving. Based on consultation with the DOL OA, the Treasury Department and the IRS also understand that registered apprenticeship programs are expected to provide prospective employers with the program’s established standards and requirements, including those reviewed by the DOL or the State apprenticeship agency.

The Treasury department and the IRS have determined that the final regulations must interpret the statutory language in a way that gives meaning to the entire phrase, and also appropriately recognize procedures implemented by the DOL OA. Accordingly, the final regulations provide that the requirements referenced as part of the established standards and requirements are those additional requirements that are established by the registered apprenticeship program for the placement of apprentices, applicable to all employers participating in the registered apprenticeship program, and not found by the DOL OA or a State apprenticeship agency to be contrary to the DOL guidance regarding the administration of registered apprenticeship programs.

Consistent with this explanation and in response to comments, the final regulations revise the proposed rule with respect to the established standards and requirements that must not be rejected by taxpayers, contractors, or subcontractors for purposes of satisfying the Good Faith Effort Exception. For example, if a registered apprenticeship program requires all employers who request qualified apprentices to enter into an agreement with the registered apprenticeship program, sign a collective bargaining agreement, and pay user fees, and these requirements have not been found by the DOL OA or a State apprenticeship agency to be contrary to DOL guidance regarding the administration of registered apprenticeship programs, then a denial of the request because the employer refused to enter into the agreement, sign the collective bargaining agreement, or pay the user fees would not qualify as a valid denial for purposes of the Good Faith Effort Exception. In order to substantiate the Good Faith Effort Exception, a taxpayer will be expected to document that a denial of a request was not because of the taxpayer’s refusal to comply with the established standards and requirements of the registered apprenticeship program.

Taxpayers, contractors, and subcontractors also retain the ability to contact other registered apprenticeship

programs that do not have similar requirements in an effort to satisfy the Apprenticeship Requirements or the Good Faith Effort Exception. Because of the requirement that taxpayers, contractors, and subcontractors contact registered apprenticeship programs with a geographic area of operation that includes the location of the facility, the Treasury Department and the IRS do not anticipate that the established standards and requirements of the registered apprenticeship program will conflict with those required by State law. In the unlikely event that they do, the taxpayer, contractor, or subcontractor should contact the DOL OA for assistance.

g. Other Good Faith Effort Exception Issues

A commenter asked the Treasury Department and the IRS to consider limiting the number of Good Faith Effort Exceptions available per trade to encourage taxpayers to individually sponsor new registered apprenticeship programs. The Treasury Department and the IRS acknowledge that there is interest in developing new registered apprenticeship programs to meet the anticipated need for additional qualified apprentices. The final regulations already impose some limits on the Good Faith Effort Exception through the requirement to submit additional requests following the denial of a request and other requirements relating to the required contents and scope of a request. The final regulations do not otherwise impose a limit on the availability of using the Good Faith Effort Exception.

Under section 45(b)(8)(D)(ii), to satisfy the Good Faith Effort Exception, requests must be made for qualified apprentices from a registered apprenticeship program as defined in section 3131(e)(3)(B). One commenter was concerned that employers would fund apprenticeship programs and request qualified apprentices from those programs in an effort to manufacture denials. To reduce abuse of the Good Faith Effort Exception, the commenter recommended requiring apprenticeship requests to be sent only to registered programs with a prior record of operation and prior record of meeting certain graduation rates. A few other commenters were concerned with the proliferation of new registered apprenticeship programs that are registered with the DOL but do not provide training to a meaningful number of workers.

As discussed in Section VIII.B.1.c., the final regulations clarify that a taxpayer cannot satisfy the Good Faith

Effort Exception through a denial from a registered apprenticeship program its sponsors. If the program sponsored by the taxpayer has no available qualified apprentices, the taxpayer must contact other registered apprenticeship programs for qualified apprentices to satisfy the Apprenticeship Requirements or the Good Faith Effort Exception. Additionally, while the Treasury Department and the IRS recognize that there are concerns that the Good Faith Effort Exception may be abused, the statute requires requests of qualified apprentices from registered apprenticeship programs. Registered apprenticeship programs are registered by the DOL OA or a recognized State apprenticeship agency, pursuant to the standards in 29 CFR parts 29 and 30. As indicated in Section II.D.1. of this Background, the DOL is responsible for regulating the registered apprenticeship programs, and the extent to which operational history, graduation rates, and training are relevant to registration is more appropriate for the DOL to determine. Comments suggesting that the final regulations impose requirements on registered apprenticeship programs beyond those required by the DOL are outside the scope of these final regulations and are not adopted.³⁶

Another commenter suggested that taxpayers make requests solely to the DOL registered apprenticeship programs. Under 45(b)(8)(D)(ii), to qualify for the Good Faith Effort Exception, a taxpayer is required to make a request for a qualified apprentice from a registered apprenticeship program, as defined in section 3131(e)(3)(B). Under 3131(e)(3)(B), a registered apprenticeship program means an apprenticeship registered under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*) that meets the standards of subpart

A of part 29 and part 30 of title 29, Code of Federal Regulations.

29 CFR 29.3(a) provides that eligibility for registration of an apprenticeship program is conditioned upon a program's conformity with the apprenticeship program standards of 29 CFR part 29. For a program to be determined by the DOL as conforming with the standards under 29 CFR part 29, the program must apply for registration and be registered with the DOL OA or with a State apprenticeship agency recognized by the DOL OA. 29 CFR 29.2 defines a State apprenticeship agency to mean an agency of a State government that has responsibility and accountability for apprenticeship within the State. 29 CFR 29.2 specifies that only a State apprenticeship agency may seek recognition by the DOL OA as an agency that has been properly constituted under an acceptable law or Executive order, and authorized by the DOL OA to register and oversee apprenticeship programs. Thus, the final regulations provide that a request may be made to a registered apprenticeship program that is either registered by the DOL OA or a State apprenticeship agency. Regardless of whether the program is registered by the DOL OA or a State apprenticeship agency, the registered apprenticeship program must meet the standards of 29 CFR parts 29 and 30.

A commenter recommended expanding the Good Faith Effort Exception to make allowances for emergency circumstances during which it may not be practicable or in the public interest to ensure compliance with the Apprenticeship Requirements, such as during an unexpected outage due to severe weather or operational issues. The commenter explained that in these circumstances, companies must be able to restore service quickly to provide critical fuel supplies.

The Treasury Department and the IRS acknowledge that there may be circumstances in which it will be impractical to have qualified apprentices perform work on the qualified facility. However, the Apprenticeship Requirements do not require qualified apprentices to work at all times. The Participation Requirement only requires each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility to employ one or more qualified apprentices to perform such work. The Labor Hours Requirement only requires taxpayers to ensure that not less than a certain percentage (10 percent, 12.5 percent, or 15 percent,

depending on the date on which construction began) of total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility, be performed by qualified apprentices.

In other words, taxpayers have flexibility in satisfying the Labor Hours Requirement. Additionally, the Apprenticeship Requirements apply only to the construction of the qualified facility (including alteration and repair performed during construction), and not to alteration or repair work conducted after the facility is placed in service. Because the Apprenticeship Requirements do not apply to the alteration or repair work after a facility is placed in service and because the Labor Hours Requirement only requires qualified apprentices to perform a certain percentage of work, the Treasury Department and the IRS have determined that the Good Faith Effort Exception does not need to be expanded to make allowances for emergency circumstances contemplated by the commenter.

One commenter requested that the Treasury Department and the IRS grant a Good Faith Effort Exception in situations in which taxpayers are denied qualified apprentices because States have illegally and unjustifiably delayed or denied registration of apprenticeship programs. The Good Faith Effort Exception requires a request to a registered apprenticeship program. If the apprenticeship program is not registered, the denial of or nonresponse to that request is irrelevant for purposes of the Good Faith Effort Exception. The Treasury Department and the IRS decline to adopt an exception from that rule based on the reasons an apprenticeship program is denied registration.

Commenters asked for clarification regarding the operation of the Good Faith Effort Exception for employers that do not participate in registered apprenticeship programs that share a "pool" of qualified apprentices. The Treasury Department and the IRS are interpreting these comment letters as referring to group registered apprenticeship programs, under which the registered apprenticeship program places qualified apprentices with multiple-employer participants. One commenter stated that many construction firms typically sponsor an existing employee's apprenticeship through an association, community-based, or employer-run registered apprenticeship programs and the commenter was concerned that the

³⁶ Under 29 CFR 29.5(a), registered apprenticeship programs must have an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in an apprenticeable occupation, as defined in 29 CFR part 29, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program. Additionally, under 29 CFR 29.5(b)(3), a registered apprenticeship program's program standards must contain provisions that outline the work process in which the apprentice will receive supervised work experience and training on the job. Accordingly, taxpayers are required to make requests to programs that provide meaningful training to qualified apprentices. The DOL's proposed 29 CFR 29.8(a) provides that each registered apprenticeship program must have a written set of standards of apprenticeship that will govern the conduct and operation of that program. 89 FR 3118, 3278.

Good Faith Effort Exception would not align with those existing practices.

Section 45(b)(8)(D)(ii) provides that taxpayers are deemed to satisfy the Apprenticeship Requirements if they have requested qualified apprentices from a registered apprenticeship program and such request has been denied or if the registered apprenticeship program fails to respond within five business days of receiving a request. The Proposed Regulations would have provided that a taxpayer, contractor, or subcontractor must submit a written request to at least one registered apprenticeship program that has a usual and customary business practice of entering into agreements with employers for the placement of qualified apprentices in the occupation for which they are training.

The Treasury Department and the IRS recognize that many contractors currently sponsor existing employees through registered apprenticeship programs, and hours worked by those employees may satisfy the Apprenticeship Requirements, provided all requirements are met. However, as discussed in Section VII.B.1.c. of this Summary of Explanations and Revisions, if a taxpayer, contractor, or subcontractor is a registered apprenticeship program sponsor and there are no available qualified apprentices in the registered apprenticeship program sponsored by the taxpayer, contractor, or subcontractor, then the taxpayer, contractor, or subcontractor may only qualify for the Good Faith Effort Exception by demonstrating that it made a request to another registered apprenticeship program (and such request was denied or not responded to within five business days) or by establishing that there are no other registered apprenticeship programs with an area of operation that includes the location of the facility. The final regulations clarify this requirement.

A commenter asked the Treasury Department and the IRS to consider requiring the DOL OA or the appropriate State apprenticeship agency representative to sign off on a taxpayer's satisfaction of the Good Faith Effort Exception. As discussed in Section V.A. of this Summary of Comments and Explanation of Revisions, the taxpayer is ultimately responsible for ensuring compliance with the PWA requirements, including exceptions to the requirements such as the Good Faith Effort Exception, and may not rely on other parties, the DOL OA, or State apprenticeship agencies to certify compliance. Consequently, the final regulations do not adopt this suggestion.

The final regulations provide that contacting the DOL OA or a State apprenticeship agency for assistance in locating a registered apprenticeship program may be a factor for purposes of determining intentional disregard.

A commenter suggested requiring taxpayers relying on the Good Faith Effort Exception to summarize their good faith efforts as part of their reporting to the IRS. As an example, the commenter stated that taxpayers could list the registered apprenticeship programs from which they requested qualified apprentices, the dates of their requests, and any reasons that their requests were denied. The final regulations retain the requirement from the Proposed Regulations that taxpayers must maintain and preserve sufficient records to demonstrate compliance with the PWA requirements, and if the taxpayer is relying on the Good Faith Effort Exception, this includes any written requests for the employment of qualified apprentices from registered apprenticeship programs and all correspondence with the registered apprenticeship program regarding the request, including denials of such requests. Whether, and to what extent information must be provided to the IRS at filing will be addressed in IRS forms, instructions, and publications.

Some commenters suggested that to qualify for the Good Faith Effort Exception, taxpayers, contractors, or subcontractors should develop and submit apprenticeship utilization plans to the Treasury Department. The Treasury Department and the IRS decline to include this requirement in the final regulations because such rules would not further tax administration and are not required by the statute. While an apprenticeship utilization plan is not required for the Good Faith Effort Exception, the existence of a utilization plan may assist taxpayers in requesting qualified apprentices from a registered apprenticeship program and the final regulations provide that the development and use of an apprenticeship utilization plan is a factor the IRS will consider in determining whether the failure to satisfy the Apprenticeship Requirements is due to intentional disregard.

2. Apprenticeship Cure Provision

a. General Procedures

Commenters requested additional guidance concerning the Apprenticeship Cure Provision. Specifically, comments asked if there is a deadline for the penalty payment provided by section 45(b)(8)(D)(i)(II) to

cure any failure to satisfy the Labor Hours Requirement and Participation Requirement, and whether, for such penalties, the IRS would issue a final determination consistent with the Prevailing Wage Requirements, a statutory notice of deficiency, or other notice to the taxpayer regarding this penalty. The Treasury Department and the IRS understand the need for clarification regarding the deadline to make the penalty payment required by the Apprenticeship Cure Provision.

With respect to failures to pay wages at rates not less than the prevailing rates, section 45(b)(7)(B)(iv) provides that the taxpayer must make required correction and penalty payments within 180 days after a final determination to be eligible for the increased credit amount. There is no similar statutory requirement in the Apprenticeship Cure Provision. Further, section 45(b)(7)(B)(ii) provides that Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) does not apply with respect to the assessment or collection of any penalty imposed by section 45(b)(7) with respect to the Prevailing Wage Requirements. Section 45(b)(8) does not provide a similar exception to the deficiency procedures with respect to the Apprenticeship Cure Provision. The final regulations clarify that there is no specific deadline for payment of the penalty required by the Apprenticeship Cure Provision. The deficiency procedures apply to the penalty payments for the failure to satisfy the Apprenticeship Requirements. Although there is no specific statutory deadline for payment of the penalty, as discussed in Section VII.D.3. of this Summary of Comments and Explanation of Revisions, if a taxpayer makes the necessary penalty payments before the taxpayer receives notice of an examination from the IRS with respect to a claim for the increased credit amount under section 45(b)(6), the taxpayer will be presumed not to have intentionally disregarded the Apprenticeship Requirements.

At least one commenter suggested clarifying whether the Treasury Department and the IRS intended to double-count the penalty with respect to any given labor hour if the taxpayer fails to meet both the Labor Hours Requirement and Participation Requirement. The Proposed Regulations would have provided that if a taxpayer fails both the Labor Hours Requirement and the Participation Requirement the penalty would equal the sum of the penalty for the failure to meet the Labor Hours Requirement plus the penalty for failure to meet the Participation

Requirement. The penalty provision of section 45(b)(8)(D)(i)(II) provides that the penalty applies to any failure by the taxpayer to satisfy the Labor Hours Requirement under section 45(b)(8)(A) and the Participation Requirement under section 45(b)(8)(C). The use of “any failure” reflects a broad scope such that taxpayers may be subject to penalties for failure to meet the Labor Hours Requirement and the Participation Requirement with respect to the same facility.

One commenter requested that the Treasury Department and the IRS exercise discretion to decline to impose penalties for any failure to satisfy the Participation Requirement with respect to any contractor or subcontractor that qualifies as a small business under the U.S. Small Business Administration’s guidance. Although the Treasury Department and the IRS appreciate the concern for small businesses, the Participation Requirement in section 45(b)(8)(C) applies to each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility. The final regulations retain the proposed rule consistent with this statutory language.

b. Intentional Disregard

The Proposed Regulations would have provided that failures to meet the Apprenticeship Requirements would be due to intentional disregard, and subject to enhanced penalty amounts, if the failure is knowing or willful, considering all relevant facts and circumstances. The Proposed Regulations would have provided a non-exhaustive list of facts and circumstances that may be relevant to determining whether the failure was knowing or willful.

In assessing intentional disregard, commenters recommended considering whether the taxpayer: (i) used and complied with an apprenticeship utilization plan; (ii) failed to require contractors and subcontractors to forward to the taxpayer all requests to registered apprenticeship programs for qualified apprentices within five business days of when the requests were made; (iii) failed to audit requests to registered apprenticeship programs for qualified apprentices to ensure compliance with the labor hours, participation, and ratio obligations in the Apprenticeship Requirements; and (iv) abided by anti-retaliation procedures. The Proposed Regulations would have provided that the failure to meet the Labor Hours Requirement or

the Participation Requirement would be due to intentional disregard if the failure was knowing or willful. The determination that a failure was knowing or willful will be made by considering all the relevant facts and circumstances.

The final regulations provide a non-exhaustive list of facts and circumstances that may be relevant to determine whether the failure was knowing or willful. The Treasury Department and the IRS agree that the following factors are relevant and may be considered in determining whether a failure was due to intentional disregard: (i) the taxpayer’s use of and compliance with an apprenticeship utilization plan; (ii) the taxpayer requiring contractors and subcontractors to forward to the taxpayer requests to registered apprenticeship programs within five business days of when requests are made; (iii) whether taxpayers regularly reviewed contractors’ and subcontractors’ use of qualified apprentices; and (iv) investigating complaints concerning failures to comply with the Apprenticeship Requirements and complaints concerning retaliation. The final regulations incorporate these additional factors and other clarifying edits consistent with the intentional disregard factors in § 1.45–7(c)(3) that are applicable to the Prevailing Wage Requirements. Intentional disregard for purposes of the Prevailing Wage Requirements is discussed in Section VII.D.3. of this Summary of Comments and Explanation of Revisions.

A commenter recommended that a taxpayer who is found to have failed the Good Faith Effort Exception, be presumed to have done so with intentional disregard. The Good Faith Effort Exception is intended to provide relief for taxpayers, contractors, and subcontractors who were unable to employ qualified apprentices despite making valid requests for qualified apprentices to registered apprenticeship programs. The failure to qualify for the Good Faith Effort Exception does not create a presumption of intentional disregard because the intentional disregard provisions are only relevant if the taxpayer has otherwise failed to meet the Apprenticeship Requirements. Thus, the Treasury Department and the IRS decline to adopt the commenter’s suggestion.

A commenter suggested that the Treasury Department and the IRS adopt a presumption that the taxpayer did not act in good faith if a labor union or representative of a registered apprenticeship program contacted the taxpayer, contractor, or subcontractor

and made them aware of the apprenticeship requirement and the availability of qualified apprentices and was ignored. The Treasury Department and the IRS decline to adopt this recommendation. The Proposed Regulations would have provided a non-exhaustive list of facts and circumstances considered to determine whether a failure to satisfy the Apprenticeship Requirements is due to intentional disregard. If a taxpayer makes a request for qualified apprentices to a registered apprenticeship program and the registered apprenticeship program informs the taxpayer of available qualified apprentices, but the taxpayer does not employ the available qualified apprentices and fails to satisfy the Apprenticeship Requirements, then the taxpayer’s refusal to employ the available qualified apprentices could be considered in determining whether the taxpayer’s failure was due to intentional disregard. However, if labor unions or representatives of registered apprenticeship programs are reaching out to taxpayers regarding the Apprenticeship Requirements and the availability of qualified apprentices and taxpayers ignore these solicitations, taxpayers will not automatically be deemed to have acted with intentional disregard.

IX. Applying the PWA Provisions for Increased Amounts of Credit and Deduction Under Other Code Sections

The majority of the comments the Treasury Department and the IRS received relate to the general application of the PWA requirements across multiple Code sections, and those comments have been addressed in Sections I. through VIII. of this Summary of Comments and Explanation of Revisions. Additional comments that relate solely to specific Code sections are discussed in this Section IX. of this Summary of Comments and Explanation of Revisions.

A. Section 30C

Section 30C provides a credit for the cost of any qualified alternative fuel vehicle refueling property placed in service during the taxable year. For properties placed in service before January 1, 2023, the credit is equal to 30 percent. For properties placed in service after December 31, 2022, the credit is equal to 30 percent (6 percent for property of a character subject to depreciation). If a taxpayer satisfies the PWA requirements in sections 30C(g)(2) and (3) or meets the BOC Exception with respect to a qualified alternative fuel vehicle refueling project, then the

credit determined under section 30C(a) for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of such project is multiplied by five. For purposes of the PWA requirements, section 30C(g)(1)(B) defines a qualified alternative fuel vehicle refueling project as a project consisting of one or more properties that are part of a single project. The Prevailing Wage Requirements in section 30C(g)(2)(A) are that the taxpayer ensure that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of any qualified alternative fuel vehicle refueling property that is part of a qualified alternative fuel vehicle refueling project are paid wages at rates not less than prevailing rates. Under section 30(c)(g)(3), rules similar to the rules in section 45(b)(8) apply regarding the Apprenticeship Requirements.

Proposed § 1.30C–3(b) would have provided that a qualified alternative fuel vehicle refueling project would satisfy the PWA requirements for the increased credit amount if the project either begins construction prior to January 29, 2023, or meets the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8, and the recordkeeping and reporting requirements of proposed § 1.45–12.

Commenters asked whether cross-references in proposed § 1.30C–3(b)(2) to sections 45(b)(7) and 45(b)(8) meant that PWA requirements apply to alteration or repair work after a qualified property is placed in service under section 30C. Commenters asserted that the statutory text of section 30C(g)(2)(A) limits the PWA requirements only to the construction of any qualified alternative fuel vehicle refueling property. Commenters also stated the impracticality of imposing PWA requirements under section 30C after qualified alternative fuel vehicle refueling property is placed in service. Commenters emphasized that alteration or repair work of such property often requires a trained technician due to the necessary skill sets for both the hardware and software characteristics of the charging property. Commenters further stated that requesting and waiting for qualified apprentices in order to complete alteration or repair work could imperil a taxpayer's ability to comply with national uptime requirements implemented by the Department of Transportation through the National Electric Vehicle Infrastructure program.

Section 30C(g)(2)(A) states that the Prevailing Wage Requirements apply in the construction of any qualified alternative fuel vehicle refueling property that is part of a qualified alternative fuel vehicle refueling project. Nothing in section 30C requires the payment of prevailing wages with respect to alterations or repairs after the property is placed in service. By contrast, section 45(b)(7)(A) provides that the Prevailing Wage Requirements apply in the construction of a facility and to the alteration and repair of the facility in the 10-year period after placed in service. The final regulations clarify that the Prevailing Wage Requirements do not apply after a section 30C project is placed in service. The applicable scope of the PWA requirements is explained in Section VI. of this Summary of Comments and Explanation of Revisions. As explained in Section VIII.A.1. of this Summary of Comments and Explanation of Revisions, the Apprenticeship Requirements apply only during the construction of the qualified alternative fuel vehicle refueling property that is part of a qualified alternative fuel vehicle refueling project (including alterations and repairs that occur during construction) and not with respect to any alteration or repair after a section 30C project is placed in service. Under the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions, the PWA requirements do not apply to any work performed before January 29, 2023.

Another commenter suggested that the Treasury Department and the IRS consider aligning the implementation of PWA requirements for section 30C projects with forthcoming guidance on section 30C eligible census tracts. On January 19, 2024, the Treasury Department and the IRS issued Notice 2024–20 providing notice of intent to propose regulations on eligible census tracts under section 30C. Notice 2024–20 does not address the application of PWA requirements under section 30C. Guidance concerning eligible census tracts under section 30C is outside the scope of these final regulations.

B. Section 45L

Section 45L provides a credit for a qualified new energy efficient home (qualified home) that is constructed by an eligible contractor and acquired by a person from that eligible contractor for use as a residence during the taxable year. In the case of a qualifying residence that meets the Prevailing Wage Requirements, section 45L(g)(1) provides an increased credit amount. The Prevailing Wage Requirements in

section 45L(g)(2)(A) are that the taxpayer must ensure that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of any qualified residence are paid wages at rates not less than prevailing rates.

Proposed § 1.45L–3(a) would have provided that with respect to a qualified home, the credit determined under section 45L(a)(2)(B)(i) is \$2,500 and the credit determined under section 45L(a)(2)(B)(ii) is \$5,000 if the qualified home meets the requirements under section 45L(c)(1)(A) or 45L(c)(1)(B), as applicable; is constructed by an eligible contractor; is acquired by a person for use as a residence during the taxable year; and satisfies the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7, and the recordkeeping and reporting requirements of proposed § 1.45–12.

One commenter stated that the Proposed Regulations may have erroneously incorporated the requirement in proposed § 1.45–7(a) to pay prevailing wages during the 10-year period after a facility is placed in service and requested that the final regulations specify whether the PWA requirements apply after a facility is placed in service.

Section 45L(g)(2)(A) provides that the Prevailing Wage Requirements apply “in the construction of such residence.” Nothing in section 45L requires the payment of prevailing wages with respect to alterations or repairs after construction of a qualified residence ends. For the reasons described in Section IX.A. of this Summary of Comments and Explanation of Revisions, the final regulations clarify that the Prevailing Wage Requirements under section 45L do not apply after construction of a qualified residence ends. The applicable scope of the Prevailing Wage Requirements is explained in Section VI. of this Summary of Comments and Explanation of Revisions. Under the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions, the Prevailing Wage Requirements do not apply to any work performed before January 29, 2023.

C. Section 45Q

Section 45Q provides a credit for the capture and sequestration of qualified carbon oxide using equipment placed in service at a qualified facility. Section 45Q(h) provides an increased credit amount for qualified facilities or any carbon capture equipment placed in service or installed at such facilities that satisfies the PWA requirements.

Proposed § 1.45Q–6(b)(1) would have provided that to claim the increased credit amount with respect to a qualified facility the construction of which begins on or after January 29, 2023, and any carbon capture equipment placed in service at such facility, the taxpayer must meet the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7 with respect to such facility and equipment, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8 with respect to the construction of such facility and equipment, and the recordkeeping and reporting requirements of proposed § 1.45–12.

Proposed § 1.45Q–6(b)(2) would have provided that to claim the increased credit amount with respect to any carbon capture equipment the construction of which begins on or after January 29, 2023, and that is installed at a qualified facility the construction of which began prior to such date, the taxpayer must meet the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7 with respect to such equipment, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8 with respect to the construction of such equipment, and the recordkeeping and reporting requirements of proposed § 1.45–12.

Proposed § 1.45Q–6(b)(3) would have provided that to claim the increased credit amount a taxpayer does not need to meet the PWA requirements with respect to the construction of carbon capture equipment the construction of which begins prior to January 29, 2023, provided that such equipment is installed at a qualified facility the construction of which also begins prior to January 29, 2023.

Commenters sought clarification regarding the application of PWA requirements to construction of a qualified facility the construction of which begins on or after January 29, 2023. Commenters opined that section 45Q(h)(2)(A) could be interpreted to apply the PWA requirements with respect to construction of a facility before it is known or even expected to be within the definition of a qualified facility. Commenters argued that this would equate to a retroactive application of the PWA requirements and may have a negative impact on the construction of these facilities. Commenters stated that facilities may be built in 2023, but the decision to construct and install carbon capture equipment can come later as technologies develop. Commenters argued that a retroactive application of PWA requirements would put an end to

investment in this area. At least one commenter also contended that the penalty and cure provisions built into the PWA requirements would be a far from certain means to secure the increased credit amount under section 45Q. The commenter stated that construction contracts for facilities with no plans for carbon capture would have no reason to require contractors to retain and disclose wage and apprenticeship information to the taxpayer. Without such information, the taxpayer would be unable to later determine the applicable correction and penalty payments.

Section 45Q(h)(2)(A) states that to qualify for the increased credit amount, the taxpayer must satisfy the PWA requirements with respect to the construction of any qualified facility the construction of which begins on or after January 29, 2023, as well as any carbon capture equipment placed in service at such facility. Under section 45Q(d), a facility may be a qualified facility, even if carbon capture equipment was not included in its original planning and design, so long as construction of the facility and carbon capture equipment begins before January 1, 2033. There is no exception from the PWA requirements if the construction of the qualified facility begins on or after January 29, 2023. The commenters' suggestions are not adopted in the final regulations.

One commenter stated that the definition of a qualified facility could be construed as requiring taxpayers to satisfy the PWA requirements with respect to the entire facility even if only a small portion of the facility is responsible for the carbon oxide emission stream. Similarly, a commenter recommended clarifying that the scope of construction, alteration, or repair work only applies to the single process train of carbon capture equipment as defined in § 1.45Q–2(c)(3), and is not inclusive of any other construction, alteration, or repair work performed at the facility or plant. The applicable scope of the PWA requirements is explained in Section VI. of this Summary of Comments and Explanation of Revisions.

Another commenter stated that proposed § 1.45Q–6(b) would have erroneously incorporated the requirement in section 45(b)(7) and proposed § 1.45–7 to pay prevailing wages for the alteration or repair of a facility during the 10-year period after a facility is placed in service, even though section 45Q(h)(3)(A)(ii) prescribes the payment of prevailing wages for alteration or repair during the 12-year period beginning on the date the equipment was originally placed in

service. The final regulations clarify that the Prevailing Wage Requirements under section 45Q apply with respect to the alteration or repair of a qualified facility or carbon capture equipment placed in service at such facility during the applicable 12-year period. As explained in Section VIII.A.1. of this Summary of Comments and Explanation of Revisions, the Apprenticeship Requirements apply only during the construction of the facility and not with respect to any alteration or repair after a facility is placed in service. Under the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions, the PWA requirements do not apply to any work performed before January 29, 2023.

D. Section 45U

Section 45U provides a credit for electricity produced by the taxpayer at a qualified nuclear power facility (as defined in section 45U(b)(1)) and sold by the taxpayer to an unrelated person during the taxable year. Generally, for taxable years beginning after December 31, 2023, the credit is equal to the amount by which the product of 0.3 cents multiplied by the kilowatt hours of electricity produced by the taxpayer at a qualified nuclear power facility and sold by the taxpayer to an unrelated person during the taxable year exceeds the reduction amount (as determined under section 45(b)(2)) for such taxable year. Under section 45U(d), if a taxpayer satisfies the Prevailing Wage Requirements with respect to a qualified nuclear power facility, then the credit determined under section 45U(a) for the qualified nuclear power facility is multiplied by five. Under section 45U(d)(2)(A), the Prevailing Wage Requirements apply to the alteration or repair of any qualified nuclear power facility.

Proposed § 1.45U–3(a) would have provided that the amount of the zero-emission nuclear power production credit for the taxable year is equal to the credit amount determined under section 45U(a) multiplied by five, if a qualified nuclear power facility satisfies the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7 in the alteration or repair of such facility, and the recordkeeping and reporting requirements of proposed § 1.45–12.

One commenter suggested that the final regulations create an exception from the Prevailing Wage Requirements under section 45U for taxpayers, contractors, and subcontractors who have fewer than 25 employees. There is no statutory exception for employers of less than 25 individuals and, consistent

with the statute, the final regulations do not adopt one.

The applicable scope of the Prevailing Wage Requirements is explained in Section VI. of this Summary of Comments and Explanation of Revisions. As discussed in Section II. of this Summary of Comments and Explanation of Revisions, a transition rule is unnecessary because the Prevailing Wage Requirements under section 45U apply to electricity produced and sold after December 31, 2023, in taxable years beginning after such date. The Treasury Department and the IRS interpret section 13105(c) of the IRA as providing that the Prevailing Wage Requirements only apply to alterations or repairs of a qualified nuclear power facility occurring in taxable years beginning after December 31, 2023. The final regulations are clarified to reflect the statutory effective date under section 45U of the Code for alteration and repairs. Finally, as explained in Section V.D. of this Summary of Comments and Explanation of Revisions, the final rules include a definition of “qualifying project labor agreement” that is modified specifically for the purposes of section 45U.

E. Section 45V

Section 45V provides a credit for the production of qualified clean hydrogen by the taxpayer during the taxable year at a qualified clean hydrogen production facility during the 10-year period beginning on the date the facility was originally placed in service. Proposed § 1.45V–3(b)(1) would have provided that with respect to a facility the construction of which began prior to January 29, 2023, the taxpayer must meet the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7 with respect to an alteration or repair of the facility that occurs after January 29, 2023 (to the extent applicable), and must meet the recordkeeping and reporting requirements of proposed § 1.45–12, in order to claim the increased credit amount. Proposed § 1.45V–3(b)(2) would have provided that with respect to a facility, a taxpayer must meet the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8, and the recordkeeping and reporting requirements of proposed § 1.45–12 in order to claim the increased credit amount.

No comments were received specifically pertaining to proposed § 1.45V–3. The applicable scope of the PWA requirements is explained in Section VI. of this Summary of

Comments and Explanation of Revisions. As explained in Section VIII.A.1. of this Summary of Comments and Explanation of Revisions, the Apprenticeship Requirements apply only during the construction of the facility and not with respect to any alteration or repair after a facility is placed in service. Under the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions, the PWA requirements do not apply to any work performed before January 29, 2023. Proposed § 1.45V–3 is otherwise adopted without change.

F. Section 45Y

Section 45Y provides a credit for clean electricity produced by the taxpayer at a qualified facility and sold to an unrelated person, or in the case of a qualified facility that is equipped with a metering device that is owned and operated by an unrelated person, sold, consumed, or stored by the taxpayer during the taxable year, for facilities placed in service after December 31, 2024. Generally, the credit for any taxable year is the product of the kilowatt hours of electricity multiplied by either: (i) 0.3 cents (the base amount under section 45Y(a)(2)(A)); or (ii) 1.5 cents (the alternative amount under section 45Y(a)(2)(B)) for certain qualified facilities. Under section 45Y(c), both the base amount and the alternative amount are adjusted for inflation in years beginning after 2024.

Proposed § 1.45Y–3(a) would have provided that the amount of the credit for producing clean electricity determined under section 45Y(a)(2) equals 1.5 cents if any qualified clean electricity production facility satisfies the requirements of proposed § 1.45Y–3(b). Proposed § 1.45Y–3(b) would have provided that a qualified facility satisfies the PWA requirements by having a maximum net output of less than one megawatt (as measured in alternating current), or beginning construction prior to January 29, 2023, or meeting the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8, and the recordkeeping and reporting requirements of proposed § 1.45–12.

Commenters suggested definitions regarding the One Megawatt Exception for purposes of section 45Y and requested clarifications with respect to determining nameplate capacity. A few commenters suggested testing methodologies for purposes of the greenhouse gas emissions rate under section 45Y(b)(2) and specific approaches for publishing those

emissions rates under section 45Y(b)(2)(C)(i). Comments regarding the One Megawatt Exception for the purposes of section 45Y will be addressed in future guidance under section 45Y finalizing those rules.

The applicable scope of the PWA requirements is explained in Section VI. of this Summary of Comments and Explanation of Revisions. As explained in Section VIII.A.1. of this Summary of Comments and Explanation of Revisions, the Apprenticeship Requirements apply only during the construction of the facility (including alterations and repairs that occur during construction) and not with respect to any alteration or repair after a facility is placed in service. Under the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions, the PWA requirements do not apply to any work performed before January 29, 2023. The final regulations also clarify that for certain facilities, the applicable amount determined under section 45Y(a)(2) is the alternative amount described in section 45Y(a)(2)(B), subject to adjustment for inflation as provided by section 45Y(c). Proposed § 1.45Y–3 is otherwise adopted without change.

G. Section 45Z

Section 45Z provides a credit for clean transportation fuel produced by the taxpayer at a qualified facility after December 31, 2024, and sold to an unrelated person in a manner described in section 45Z(a)(4). Generally, the credit is the product of the applicable amount (determined under section 45Z(a)(2) and (3)) per gallon (or gallon equivalent) of transportation fuel multiplied by the emissions factor for the fuel (determined under section 45Z(b)). If a taxpayer satisfies the PWA requirements in sections 45Z(f)(6) and (7), then the applicable amount is \$1.00 for transportation fuel that is not a sustainable aviation fuel (non-SAF) (determined under section 45Z(a)(2)(B)) and \$1.75 for transportation fuel that is a sustainable aviation fuel (SAF) (determined under section 45Z(a)(3)(A)(ii)). If the taxpayer does not satisfy the PWA requirements in section 45Z(f)(6) and (7), the applicable amount is 20 cents for non-SAF and 35 cents for SAF. Under section 45Z(c), the applicable amounts are adjusted for inflation in years beginning after 2024.

In general, section 45Z(f)(6)(A) provides that rules similar to section 45(b)(7) apply for purposes of the Prevailing Wage Requirements. Section 45Z(f)(7) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

Section 45Z(f)(6)(B) provides a special rule for a facility placed in service before January 1, 2025. Under this rule, if a facility is placed in service before January 1, 2025, the taxpayer is not subject to the Prevailing Wage Requirements with respect to the construction of the facility but is subject to the Prevailing Wage Requirements for the alteration or repair of the facility with respect to any taxable year beginning after December 31, 2024, for which the section 45Z credit is allowed. Section 13704(c) of the IRA provides that these provisions are effective for transportation fuel produced after December 31, 2024.

Proposed § 1.45Z–3(b)(1) would have provided that a qualified facility that begins construction on or after January 29, 2023, and is placed in service after December 31, 2024, satisfies the requirements for the increased credit under section 45Z of the Code if it meets the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8, and the recordkeeping and reporting requirements of proposed § 1.45–12. Proposed § 1.45Z–3(b)(2) would have provided that a qualified facility that is placed in service before January 1, 2025, satisfies the requirements for the increased credit amount under section 45Z if it meets the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8, and the recordkeeping and reporting requirements of proposed § 1.45–12, with respect to any alteration or repair of the facility with respect to any taxable year beginning after December 31, 2024, for which the credit is allowed under section 45Z.

With respect to the proposed rule in § 1.45Z–3(b)(1), commenters asked that the final regulations clarify the requirements for the increased credit amount with respect to facilities that begin construction before January 29, 2023, but are not placed in service until after December 31, 2024. Commenters asked whether the Proposed Regulations intended to create a BOC Exception for section 45Z. Some commenters indicated support for a BOC Exception for consistency with other increased credit provisions, while others argued that there is no statutory support for a BOC Exception. Other commenters generally requested transition relief from the PWA requirements and suggested that the final regulations clarify proposed § 1.45Z–3(b)(1) to remove the clause requiring

construction on or after January 29, 2023.

In response to comments, the final regulations modify the Proposed Regulations in several respects. With respect to the rule in proposed § 1.45Z–3(b)(1) for facilities placed in service after December 31, 2024, the final regulations remove the clause requiring construction on or after January 29, 2023. The Treasury Department and the IRS agree that this language, which was intended to provide transition relief similar to that described in Section II. of this Summary of Comments and Explanation of Revisions, was confusing. Taxpayers can satisfy the requirements for the increased credit amount regardless of whether construction began before or after January 29, 2023. The Treasury Department and the IRS decline to prescribe a BOC Exception through regulation because Congress did not statutorily provide for one. Under the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions, the PWA requirements do not apply for any work performed before January 29, 2023. Thus, the final regulations provide that for facilities placed in service on or after January 1, 2025, taxpayers must meet the Prevailing Wage Requirements, but only for construction, alteration, and repair work performed on or after January 29, 2023.

Regarding the special rule proposed in § 1.45Z–3(b)(2) for facilities placed in service before January 1, 2025, commenters requested that the final regulations clarify that the special rule in section 45Z(f)(6)(B) applies to all facilities placed in service before January 1, 2025, regardless of whether construction began before January 29, 2023. The final regulations confirm that with respect to all facilities placed in service before January 1, 2025 (regardless of when construction began), the Prevailing Wage Requirements do not apply with respect to construction, but taxpayers must satisfy the Prevailing Wage Requirements with respect to any alteration or repair of the facility for taxable years beginning after December 31, 2024, for which the credit is allowed.

At least one commenter asserted that the special rule in section 45Z(f)(6)(B) also includes an exception from the Apprenticeship Requirements for facilities placed in service before January 1, 2025. Section 45Z(f)(6)(A) provides that, “[s]ubject to [the special rule of] subparagraph (B), rules similar to the [prevailing wage] rules of section 45(b)(7) shall apply.” Section 45Z(f)(7) provides that “[r]ules similar to the

apprenticeship requirement rules of section 45(b)(8) shall apply.” Under section 13101(k) of the IRA, the rules of section 45(b)(7) and 45(b)(8) apply with respect to facilities that are placed in service after December 31, 2021. Thus, the Treasury Department and the IRS interpret the PWA requirements of sections 45Z(f)(6) and 45Z(f)(7) generally as applying to any qualified facility that is placed in service after December 31, 2021, subject to the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions. There is no exception to the Apprenticeship Requirements in section 45Z(f)(7), regardless of whether a facility is placed in service before, on, or after January 1, 2025. In the absence of a statutory basis, the Treasury Department and the IRS do not provide an exception to the Apprenticeship Requirements in the final regulations.

While there is no statutory basis to except taxpayers from the Apprenticeship Requirements in section 45Z, the Treasury Department and the IRS agree that the proposed rule caused confusion for taxpayers that intend to place a qualified facility in service before January 1, 2025. The Proposed Regulations suggested that taxpayers that placed a qualified facility in service before January 1, 2025, must only satisfy the Prevailing Wage Requirements and the Apprenticeship Requirements with respect to alterations and repairs that occur in taxable years beginning after December 31, 2024. This incorrectly suggested that there was an Apprenticeship Requirement with respect to alterations and repairs to a facility after it is placed in service and did not address whether the construction of a qualified facility is subject to the Apprenticeship Requirements prior to the facility being placed in service.

In recognition of the confusion created by the Proposed Regulations, the final regulations provide additional transition relief under section 45Z for taxpayers who relied on the Proposed Regulations with respect to the Apprenticeship Requirements for facilities placed in service before January 1, 2025. In general, the final regulations allow taxpayers to continue to rely on the Proposed Regulations up to the date these regulations are published in the **Federal Register**. The final regulations provide that taxpayers may rely on proposed § 1.45Z–3(b)(2) for an additional 90 days from the date these regulations are published in the **Federal Register** as transition relief from the Apprenticeship Requirements. This 90-day period will provide taxpayers

with time to locate and request qualified apprentices from registered apprenticeship programs for any remaining construction work that occurs after 90 days after the date these regulations are published in the **Federal Register** and before the facility is placed in service. This transition relief does not apply to facilities that are placed in service after December 31, 2024. Such facilities must comply with the Prevailing Wage Requirements and the Apprenticeship Requirements with respect to construction, alteration, or repair work beginning on or after January 29, 2023.

A commenter asked for clarification regarding the applicable amount used to calculate the increased credit amount under section 45Z if the PWA requirements are satisfied. The commenter requested that the description of the credit amount in proposed § 1.45Z–3(a) be amended to clarify that the alternative applicable amount of the credit is \$1.00 per gallon for non-SAF (and \$1.75 for SAF) and not \$5.00 per gallon for non-SAF (\$8.75 for SAF).

Section 45Z generally provides a base applicable amount, and if the PWA requirements are satisfied, an alternative applicable amount that is five times the base amount. The Treasury Department and the IRS recognize that proposed § 1.45Z–3(a) could have been interpreted to mean that the entire increased credit amount determined under section 45Z(a) should be multiplied by five, rather than just the base applicable amount. The final regulations clarify that if the PWA requirements are satisfied, then the applicable amount is the alternative applicable amount determined under section 45Z(a)(2)(B) for non-SAF or section 45Z(a)(3)(A)(ii) for SAF, each subject to adjustments for inflation under section 45Z(c).

H. Section 48C

Section 48C provides a credit for a qualified investment in a qualifying advanced energy project for that taxable year (section 48C Credit). The IRA added section 48C(e) to the Code, extending the section 48C Credit to provide an additional section 48C Credit allocation of \$10 billion. Generally, the credit amount for section 48C Credits allocated pursuant to section 48C(e) is equal to six percent of the basis of the eligible property. Under section 48C(e)(4), if a taxpayer satisfies the PWA Requirements in section 48C(e)(5) and (6) with respect to a qualifying advanced energy project, then the credit amount determined under section 48C(a) is 30 percent.

To satisfy the Prevailing Wage Requirements under section 48C(e)(5)(A), a taxpayer must ensure that with respect to a qualifying advanced energy project, any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the re-equipping, expansion, or establishment of a manufacturing facility are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the project is located. Section 48C(e)(5)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 48C(e)(6) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

A section 48C Credit allocation is made after an application and project certification. The extension of section 48C and the additional allocations under section 48C(e) are effective on January 1, 2023. The Treasury Department and the IRS issued Notice 2023–18, 2023–10 I.R.B. 508, Notice 2023–44, 2023–25 I.R.B. 924, and Notice 2024–36, 2024–24 I.R.B. 1479, to provide guidance under section 48C(e). These notices provide a process for the IRS to allocate section 48C Credits. To prevent an overallocation of section 48C Credits, section 5.07 of Notice 2023–18 requires a taxpayer that applies for a section 48C Credit allocation at the 30 percent credit amount to confirm that the taxpayer intends to satisfy the PWA requirements. Section 5.07 of Notice 2023–18 additionally requires that if the taxpayer provides notification that it placed the project in service, the taxpayer must also confirm that it satisfied the PWA requirements.

The Proposed Regulations would have provided that if a taxpayer satisfies both the PWA requirements and the PWA confirmation requirements provided in Notice 2023–18 (or any subsequent guidance), then the credit amount for section 48C Credits allocated pursuant to section 48C(e) of the Code would be equal to 30 percent. Notice 2023–44 provides that a property placed in service prior to being awarded a section 48C Credit under the section 48C(e) program is not eligible to receive such an allocation. It is possible that a taxpayer will have performed work after January 1, 2023, with respect to the construction, alteration, or repair of a qualifying advanced energy project and before being awarded an allocation under section 48C.

Proposed § 1.48C–3 would have provided that the increased credit

amount is available for any qualifying advanced energy project that satisfies the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8, and the recordkeeping and reporting requirements of proposed § 1.45–12.

One commenter stated that the Proposed Regulations may have erroneously incorporated the requirement in proposed § 1.45–7(a) to pay prevailing wages during the 10-year period after a facility is placed in service and requested that the final regulations specify whether the PWA requirements apply after a facility is placed in service. Section 48C provides that the Prevailing Wage Requirements apply in the “re-equipping, expansion, or establishment of a manufacturing facility.” Nothing in section 48C requires the payment of prevailing wages with respect to alterations or repairs after a qualifying advanced energy project is placed in service. For the reasons described in Sections VIII.A.1. and IX.A. of this Summary of Comments and Explanation of Revisions, the final regulations amend the Proposed Regulations to confirm that the PWA requirements under section 48C apply only during the re-equipping, expansion, or establishment of a qualifying advanced energy project and not with respect to any alteration or repair after a qualifying advanced energy project is placed in service. Under the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions, the PWA requirements do not apply to any work performed before January 29, 2023.

Additionally, a commenter requested guidance concerning whether for purposes of section 48C projects the PWA requirements are similarly limited to the same eligible property defined by 48C(c)(2). The commenter asked for PWA requirements to be limited to this same eligible property and any costs integral to that eligible property—excluding any work related to the building or its structural components. The applicable scope of the PWA requirements is explained in Section VI. of this Summary of Comments and Explanation of Revisions.

I. Section 179D

Section 179D(a) generally allows a deduction in an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year. Section 179D(f) generally allows as a deduction for the taxable year the amount of the aggregate adjusted basis of energy efficient

building retrofit property placed in service by the taxpayer pursuant to a qualified retrofit plan. Under section 179D(b)(3), (4), and (5), an increased deduction amount is allowed if the taxpayer ensures that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the installation of any energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan (collectively, 179D qualified property) are paid wages at rates not less than the prevailing rates and satisfies the Apprenticeship Requirements. Under section 179D(g), the increased deduction amount in 179D(b) is subject to an adjustment for inflation in taxable years beginning after 2022.

Proposed § 1.179D–3(b) would have provided that the increased deduction is available for any 179D qualified property that either began installation prior to January 29, 2023, or meets the Prevailing Wage Requirements of section 45(b)(7) and proposed § 1.45–7, the Apprenticeship Requirements of section 45(b)(8) and proposed § 1.45–8, and the recordkeeping and reporting requirements of proposed § 1.45–12.

One commenter stated that the Proposed Regulations may have erroneously incorporated the requirement in proposed § 1.45–7(a) to pay prevailing wages during the 10-year period after a property is placed in service and requested that the final regulations specify whether the PWA requirements apply after a property is placed in service. Section 179D provides that the Prevailing Wage Requirements apply “in the installation of any property.” Nothing in section 179D requires the payment of prevailing wages with respect to alterations or repairs after such installation. For the reasons described more fully in Sections VIII.A.1. and IX.A. of this Summary of Comments and Explanation of Revisions, the final regulations amend the Proposed Regulations to confirm that the PWA requirements under section 179D apply only during the installation of the 179D qualified property and not with respect to any alteration or repair after the 179D qualified property is placed in service. The applicable scope of the PWA requirements is explained in Section VI. of this Summary of Comments and Explanation of Revisions. Under the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions, the PWA requirements do not apply to any work performed before January 29, 2023. The final regulations also clarify that the

deduction amounts are increased for inflation.

On October 5, 2022, the IRS issued Notice 2022–48 and requested comments with respect to the allocation of the section 179D deduction and the criteria that the Treasury Department and the IRS should consider in drafting rules to determine the person that is primarily responsible for designing the property under section 179D(d)(3)(A). The Proposed Regulations would have provided general rules for satisfying the PWA requirements for purposes of section 179D, but the Proposed Regulations would not have addressed the allocation of the deduction in the case of 179D qualified property installed on, or in property owned by, a specified tax-exempt entity as described in section 179D(d)(3)(B).

A few commenters suggested that the Treasury Department and the IRS provide an exception to meeting PWA requirements for primary designers who are allocated the deduction under section 179D(d)(3)(A). For example, the commenters explained that because designers do not directly employ laborers, mechanics, contractors, or subcontractors and because the allocating tax-exempt entity has little interest in undertaking the compliance burden for an allocated deduction, the designer will have difficulty ensuring compliance with the PWA requirements. Another commenter suggested that the regulations require the contractor to consult with all other contractors and subcontractors on the project and certify that they are not also seeking the allocation of the deduction, similar to an approach developed by the General Services Administration.

The Proposed Regulations would not have provided rules regarding the allocation of the deduction in the case of 179D qualified property installed on or in property owned by a specified tax-exempt entity. After reviewing comments, the Treasury Department and the IRS determined that the section 179D allocation is outside the scope of these final regulations and rules for the section 179D allocation will be addressed in future guidance.

One commenter asked whether architects and engineers who do not employ laborers, mechanics, contractors, or subcontractors automatically qualify for the increased section 179D deductions. Generally applicable rules for laborers and mechanics are discussed in Section VII.C.1. of this Summary of Comments and Explanation of Revisions. Another commenter stated that without a *de minimis* threshold for noncompliance, small, accidental deviations may

prevent earning the increased section 179D deduction. The limited penalty waiver is discussed in Section VII.D.4. of this Summary of Comments and Explanation of Revisions.

Additionally, a commenter requested that section 179D be modified so that the relevant property’s basis is not reduced by the amount of the claimed deduction under section 179D. The commenter stated that reducing the property’s basis by the received deduction amount may actually place the taxpayer worse off financially. Statutory revisions are outside the scope of these final regulations.

X. Recordkeeping and Reporting Requirements

A. In General

Section 45(b)(12) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of section 45(b), including regulations or other guidance that provide requirements for recordkeeping or information reporting for purposes of administering the requirements of section 45(b). Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001–1(a) provides that any person subject to income tax must keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax. Section 1.6001–1(e) provides that the books and records required by § 1.6001–1 must be retained so long as the contents thereof may become material in the administration of any Internal Revenue law.

Proposed § 1.45–12(a) would have provided that the increased credit amount must be claimed in such form and manner as may be prescribed in IRS forms or instructions or in publications or guidance published in the Internal Revenue Bulletin. The preamble to the Proposed Regulations also stated that the Proposed Regulations would require taxpayers to provide a statement with the tax return that claims an increased amount of credit or deduction that includes aggregate information as detailed in proposed § 1.45–12.

The Proposed Regulations would have imposed recordkeeping requirements that are generally consistent with the recordkeeping requirements under the DBA regime for purposes of the PWA requirements. Proposed § 1.45–12(b)

would have provided that with respect to each qualified facility for which a taxpayer is claiming or transferring (under section 6418) an increased credit amount under section 45(b)(6)(A), unless section 45(b)(6)(B)(i) or 45(b)(6)(B)(ii) applies, the taxpayer would be required to maintain and preserve records sufficient to demonstrate compliance with the applicable PWA requirements in proposed §§ 1.45–7 and 1.45–8, respectively. Under the Proposed Regulations, at a minimum, those records would have included payroll records for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, contractor, or subcontractor in the construction, alteration, or repair of the qualified facility.

Proposed § 1.45–12(c) would have provided an enumerated list of records, in addition to payroll records otherwise maintained by the taxpayer, that may be sufficient to establish compliance with the Prevailing Wage Requirements. The list in proposed § 1.45–12(c) included the following information for each laborer or mechanic (including each qualified apprentice) employed by the taxpayer, a contractor, or subcontractor with respect to each qualified facility: (i) identifying information, including the name, social security or tax identification number, address, telephone number, and email address; (ii) the location and type of qualified facility; (iii) the labor classification(s) the taxpayer applied to the laborer or mechanic for determining the prevailing wage rate and documentation supporting the applicable classification, including the applicable wage determination; (iv) the hourly rate(s) of wages paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof) for each applicable labor classification; (v) records to support any contribution irrevocably made on behalf of a laborer or mechanic to a trustee or other third person pursuant to a bona fide fringe benefit program, and the rate of costs that were reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a plan or program described in 40 U.S.C. 3141(2)(B), including records demonstrating that the enforceable commitment was provided in writing to the laborers and mechanics affected; (vi) the total number of labor hours worked per pay period; (vii) the total wages paid for each pay period (including identifying any deductions from wages); (viii) records to support wages paid to

any apprentices at less than the applicable prevailing wage rates, including records reflecting the registration of the apprentices with a registered apprenticeship program and the applicable wage rates and apprentice-to-journeyworker ratios prescribed by the apprenticeship program; and (ix) the amount and timing of any correction payments and documentation reflecting the calculation of the correction payments.

Proposed § 1.45–12(d) would have required taxpayers subject to the Apprenticeship Requirements to maintain sufficient records to establish compliance with the Labor Hours Requirement, Ratio Requirement, and Participation Requirement. Under the Proposed Regulations, records that may be sufficient to demonstrate compliance with the applicable Apprenticeship Requirements in § 1.45–8 would have included the following information for each apprentice employed by the taxpayer, a contractor, or subcontractor with respect to each qualified facility: (i) any written requests for the employment of apprentices from registered apprenticeship programs, including any contacts with the DOL OA or a State apprenticeship agency regarding requests for apprentices from registered apprenticeship programs; (ii) any agreements entered into with registered apprenticeship programs with respect to the construction, alteration, or repair of the facility; (iii) documents reflecting the standards and requirements of any registered apprenticeship program, including the applicable ratio requirement prescribed by each registered apprenticeship program from which taxpayers, contractors, or subcontractors employ apprentices; (iv) the total number of labor hours worked by apprentices; and (v) records reflecting the daily ratio of apprentices to journeyworkers.

The Proposed Regulations under sections 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48C, and 179D would have provided similar recordkeeping requirements as described in proposed § 1.45–12.

As discussed in Section I. of this Summary of Comments and Explanation of Revisions, several commenters suggested that that final regulations should impose additional reporting and recordkeeping requirements, including many pre-filing reporting requirements such as certified weekly payroll and monthly apprenticeship hours reporting. However, other commenters stated that having to comply with the recordkeeping and reporting requirements as proposed would be burdensome and create costly

administrative work for business owners. These commenters requested that documentation and reporting requirements be as streamlined and minimal as possible.

As explained in greater detail in Section I. of this Summary of Comments and Explanation of Revisions, the final regulations strike an appropriate balance between imposing requirements intended to encourage the timely and correct payment of prevailing wages and the hiring of qualified apprentices while recognizing the prospective nature inherent in the increased amount of credit and deduction. The Treasury Department and the IRS want to avoid imposing unnecessary administrative work on taxpayers, especially small businesses. However, the IRS must be able to determine taxpayer compliance with the PWA requirements once a return is filed claiming an increased amount of credit or deduction. For this reason, the final regulations do not incorporate the suggestions regarding pre-filing activities, although many comments are incorporated as factors for determining intentional disregard, and instead adopt the robust recordkeeping and reporting requirements from the Proposed Regulations. The final regulations provide recordkeeping and reporting requirements that are consistent with the DBA, relevant for the purposes of the increased amount of credit and deduction and the intent of the IRA, and that are necessary for, and consistent with, sound tax administration.

Many commenters stated that the proposed regulations struck an appropriate balance between ensuring there is significant documentation to ensure compliance without adding unnecessary burden. Some commenters requested that taxpayers be provided flexibility related to the recordkeeping requirements, while others asked for guidance on how to demonstrate compliance with the recordkeeping requirements and whether specific records would satisfy the recordkeeping requirement. A few commenters suggested that the final regulations incorporate or require specific forms or reporting methods similar to those used in other contexts (for example, the IRS Form 1099). Some commenters suggested taxpayers could use the DOL's Registered Apprenticeship Partners Information Data System (commonly referred to as RAPIDS) to assist in reporting compliance with the Participation Requirement. Another commenter suggested the final regulations require taxpayer to report evidence of compliance with the Good Faith Effort Exception at filing.

The final regulations largely follow the approach in the Proposed Regulations. Consistent with IRS practice, the final regulations adopt the rule from the Proposed Regulations that the increased credit amount must be claimed in such form and manner as may be prescribed in IRS forms, instructions, publications, or guidance published in the Internal Revenue Bulletin. Comments suggesting specific forms or reporting methods are not incorporated. It is critical that the IRS retain the ability to prescribe the required reporting requirements in relevant forms and instructions to allow for modifications as necessary. Draft forms and instructions are typically made available for public comment on <https://www.irs.gov>.

To provide flexibility to taxpayers, the final regulations do not prescribe a specific form or manner in which records must be kept. In response to comments that asked whether certain records would be sufficient, the final regulations indicate that an accurately completed DOL Form WH-347 may constitute a sufficient record reflecting the payment of prevailing wages to the individuals identified on the form for the period identified on the form for purposes of § 1.45–12. The final regulations also add copies of contracts for construction, alteration, or repair of the facility with any contractor or subcontractor to the list of records that may be sufficient to demonstrate compliance with the Prevailing Wage Requirements. In most cases, payroll records alone will not demonstrate a taxpayer's compliance with the totality of the PWA requirements. Nothing in these regulations is intended to restrict the IRS's authority to request additional records to determine whether the taxpayer has complied with the PWA requirements. For example, during an examination, the IRS may request information and documents with respect to the taxpayer's process for the proper identification, classification, and payment of wages to laborers and mechanics performing construction on the qualified facility and for determining labor needs on a construction project, including specific apprenticeship needs.

Commenters requested guidance on the length of time records need to be maintained. A commenter stated that once a construction project is completed, the taxpayer would no longer have access to competitively sensitive data, such as wage information, stored by contractors and subcontractors. One commenter suggested that records should be retained for at least three years after all

work on the construction project is completed. Another commenter suggested requiring taxpayers to retain adequate payroll records for at least five years from the projected end of the tax credit period. At least one commenter suggested that not retaining adequate records should be considered evidence of intentional disregard. The commenter emphasized that maintaining such records would not be burdensome because records are now kept digitally. The final regulations clarify that taxpayers are required to maintain and preserve records sufficient to establish compliance with the PWA requirements for relevant tax years as provided for under section 6001 and § 1.6001–1(e). The final regulations also add the failure to maintain records to the intentional disregard factors.

Some commenters stated that it might be difficult for taxpayers to obtain records of wages paid by contractors and subcontractors. Commenters suggested permitting taxpayers to rely on written certifications from contractors and subcontractors that the contractor or subcontractor is complying with the PWA requirements, including recordkeeping. One commenter suggested that the final regulations permit taxpayers to rely on contractual provisions that require strict adherence to IRS goals and standards. Another commenter was concerned that despite contractual agreements between the taxpayer and a general contractor detailing the PWA requirements, taxpayers would be subject to the subcontractors' recordkeeping abilities, over which they have no control.

Commenters also claimed that the proposed recordkeeping requirements raise privacy and antitrust concerns. Specifically, commenters argued that requiring taxpayers to maintain the payroll records of contractors and subcontractors could violate Federal or State privacy laws or company policies on the proper handling of personally identifiable information (PII) such as social security numbers and dates of birth. Commenters suggested: (i) allowing the direct employer (whether that is the taxpayer, contractor, or subcontractor) to maintain required payroll records and confidential employee information subject to contractual provisions requiring the maintenance and preservation of the records and permitting access to such records by the IRS as part of a duly issued audit request; (ii) allowing the taxpayer to collect and maintain the payroll records and data specified in proposed § 1.45–12 with a third-party vendor subject to similar contractual provisions and access to the IRS audit

function; (iii) allowing taxpayers, transferee taxpayers, and/or their agents to inspect payroll records and data under a nondisclosure arrangement as part of proper due diligence without taking physical custody or control of such payroll records or data; (iv) allowing payroll records and data to be collected and maintained by the taxpayer or any contractor in a manner that redacts certain sensitive information as long as the information is maintained by the direct employer pursuant to contractual arrangements; and (v) allowing alternative forms of validation for hourly wage rates and other payroll data to avoid antitrust and confidentiality concerns among taxpayers, contractors, and subcontractors. A commenter recommended that for recordkeeping of fringe benefits, the final regulations should accept sworn statements of contributions as sufficient. The commenter stated that it is exceedingly difficult for entities to monitor and verify subcontractor contributions to fringe benefit programs.

Consistent with the requirements in section 45(b)(7) and (8) that the taxpayer ensure that the Prevailing Wage Requirements and Apprenticeship Requirements are satisfied, the final regulations adopt the rule as proposed that the taxpayer is required to maintain all relevant records, regardless of whether the laborers and mechanics are employed by the taxpayer, a contractor, or a subcontractor. In response to comments regarding privacy concerns and data sensitivity, the final regulations amend the proposed rule to clarify that records need only contain the last four digits of a social security number. The final regulations also provide three alternatives that taxpayers may use to satisfy the recordkeeping requirements in § 1.45–12. These alternatives are intended to assist taxpayers in satisfying the recordkeeping requirements while also complying with applicable law. Under the final regulations: (i) taxpayers may collect and physically retain redacted records from every relevant contractor and subcontractor; (ii) taxpayers may use a third-party vendor to collect and physically retain records from every relevant contractor and subcontractor on behalf of the taxpayer, and the records may have PII redacted to comply with applicable privacy laws; or (iii) taxpayers, contractors, and subcontractors may physically retain unredacted records for their own employees. Under all three alternatives, unredacted records must be made available to the IRS upon request.

Although retaining records consistent with one or more of these options will constitute satisfaction of the recordkeeping requirements in § 1.45–12 of these final regulations, the Prevailing Wage Requirements in § 1.45–7 and the Apprenticeship Requirements in § 1.45–8 of these final regulations must be satisfied (as applicable) in order for the taxpayer to obtain the increased amount of credit or deduction. The taxpayer is ultimately responsible for compliance with the PWA requirements and may not rely on certifications from contractors and subcontractors that they are complying with PWA requirements (including recordkeeping). Taxpayers may delegate certain recordkeeping activities to comply with applicable laws; however, the ultimate responsibility to ensure compliance with the PWA requirements remains with the taxpayer, and taxpayers may not rely on a contractual provision to delegate that responsibility to contractors and subcontractors for purposes of satisfying the PWA requirements. Additionally, taxpayers should consider the impact that a recordkeeping approach may have on their ability to demonstrate the facts and circumstances listed in §§ 1.45–7(c)(3)(iii) and 1.45–8(f)(2)(ii) pertaining to intentional disregard.

The preamble to the Proposed Regulations would have provided that to demonstrate that a failure was not due to intentional disregard, taxpayers must maintain and preserve records sufficient to document any failures to satisfy the Prevailing Wage Requirements or the Apprenticeship Requirements, and the actions taken to prevent, mitigate, or remedy the failure (for example, records demonstrating that the taxpayer regularly reviewed payroll practices, included requirements to pay prevailing wages in contracts with contractors, and posted prevailing wage rates in a prominent place on the job site). The preamble to the Proposed Regulations also indicated that the Proposed Regulations would have imposed recordkeeping requirements related to correction and penalty payments, penalty waiver provisions, and the Good Faith Effort Exception. The final regulations incorporate these provisions as described in the preamble to the Proposed Regulations and clarify that any failures to satisfy the Prevailing Wage Requirements and the actions taken to prevent, mitigate, or remedy the failure may be documented with records demonstrating that the taxpayer engaged an independent third party to aid in the review of payroll information.

B. Recordkeeping for Credits Transferred Pursuant to Section 6418

The Proposed Regulations would have provided that because an eligible taxpayer determines any increased credit amount applicable to the PWA requirements, the general recordkeeping requirements would remain with an eligible taxpayer who transfers a specified credit portion that includes an increased credit amount. The increased credit amount that is determined by an eligible taxpayer would be reported on the return of the eligible taxpayer. The minimum required documentation to be provided to the transferee taxpayer is a separate requirement under the 6418 Final Regulations that does not impact the requirements in these final regulations. Comments received relating to section 6418 and responses by the Treasury Department and the IRS are discussed in Section V.B. of this Summary of Comments and Explanation of Revisions.

XI. Applicability Date

The Proposed Regulations would have provided that the final regulations apply to facilities, property, projects, or equipment placed in service in taxable years ending after the date these final regulations are published in the **Federal Register** and the construction, or installation, of which begins after the date these final regulations are published in the **Federal Register**. The Proposed Regulations would have provided that taxpayers could rely on the Proposed Regulations with respect to construction or installation of a facility, property, project, or equipment beginning on or after January 29, 2023, and on or before the date these final regulations are published, provided, that beginning after the date that is 60 days after August 29, 2023, taxpayers follow the Proposed Regulations in their entirety and in a consistent manner. The Proposed Regulations would have also provided that the provisions of sections 3 and 4 of Notice 2022–61 would be obsolete for facilities, property, projects, or equipment the construction, or installation of which begins after the date these final regulations are published. The Proposed Regulations would not have otherwise affected Notice 2022–61.

Several commenters requested transition relief with respect to the applicability date of these final regulations. One commenter suggested that because Notice 2022–61 was used to justify the application of PWA requirements to projects that started after January 29, 2023, the IRS should establish a new effective date for the

IRA's PWA requirements. The commenter argued that, at a minimum, additional guidance set forth in the Proposed Regulations and the final regulations should be applied only prospectively. The commenter raised that the rescission of guidance issued in Notice 2022–61, if done on a retroactive basis, would be arbitrary and capricious and a violation of the Administrative Procedure Act, 5 U.S.C. 702, unless the IRS provides much greater explanation for its actions.

As stated in Section II. of this Summary of Comments and Explanation of Revisions, the final regulations provide a transition rule under which the PWA requirements do not apply to construction, alteration, and repair activities occurring before January 29, 2023. Further, the final regulations generally apply to qualified facilities placed in service in taxable years ending after June 25, 2024 and the construction of which begins after June 25, 2024. Additionally, taxpayers may choose to apply the final regulations to qualified facilities placed in service in taxable years ending on or before June 25, 2024, and qualified facilities placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow the final regulations in their entirety and in a consistent manner. Taxpayers may also rely on the Proposed Regulations with respect to construction of a qualified facility beginning on or after January 29, 2023, and on or before June 25, 2024, provided, that beginning after the date that is 60 days after August 29, 2023, taxpayers follow the Proposed Regulations in their entirety and in a consistent manner.

Consistent with the Proposed Regulations, the final regulations confirm that the obsolescence of sections 3 and 4 of Notice 2022–61 is prospective as it applies facilities, property, projects, or equipment the construction, or installation, of which begins after June 25, 2024. The final regulations do not otherwise affect Notice 2022–61.

XII. Severability

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Applicability Dates

These regulations apply to qualified facilities placed in service in taxable

years ending after June 25, 2024 and the construction of which begins after June 25, 2024. Taxpayers may choose to apply these regulations to qualified facilities placed in service in taxable years ending on or before June 25, 2024, and qualified facilities placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow these regulations in their entirety and in a consistent manner. Taxpayers may also continue to rely on the Proposed Regulations with respect to construction of a qualified facility beginning on or after January 29, 2023, and on or before June 25, 2024, provided, that beginning after the date that is 60 days after August 29, 2023, taxpayers follow the Proposed Regulations in their entirety and in a consistent manner.

Effect on Other Documents

Sections 3 and 4 of Notice 2022–61 are obsoleted for facilities, property, projects, or equipment the construction, or installation, of which begins after August 26, 2024.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

The collections of information in these final regulations contain reporting, recordkeeping, and third-party disclosure requirements, each of which is described below. These collections are required for purposes of claiming an increased amount of credit or deduction; and are necessary for the IRS to validate that taxpayers have met the regulatory requirements and are eligible to claim the increased credit amounts. The likely respondents are individual, business, trust and estate filers, and tax-exempt organizations.

These final regulations set forth procedures for requesting supplemental

wage determinations and wage rates for additional classifications from the DOL. This collection is approved by the OMB under DOL Control Number 1235–0034. These final regulations do not alter any of the DOL collections approved under this control number.

These final regulations include requirements to keep records sufficient to demonstrate that the PWA requirements have been met as detailed in § 1.45–12. For purposes of the PRA, the records required to be kept pursuant to § 1.45–12 are considered general tax records. The collection of these general tax records is approved annually under 1545–0074 for individuals/sole proprietors, 1545–0123 for business entities, and 1545–0047 for tax-exempt organizations. The IRS received from the OMB a new OMB Control number (1545–2315) for trust and estate filers.

These final regulations also include reporting requirements that taxpayers provide a statement with the tax return that claims an increased amount of credit or deduction that includes aggregate information as detailed in § 1.45–12. The IRS may issue forms and instructions in future guidance for the purpose of meeting these reporting requirements. These reporting requirements will be covered under 1545–0074 for individuals/sole proprietors and 1545–0123 for business entities. These reporting requirements are covered under the new OMB Control Number (1545–2315) for trust and estate filers.

These final regulations include third-party disclosures that include notifying laborers and mechanics of the applicable prevailing wage rates as detailed in § 1.45–7. These final regulations also include third-party disclosures for taxpayers requesting the dispatch of qualified apprentices from a registered apprenticeship program as detailed in § 1.45–8. The third-party disclosures apply to all filers. The third-party disclosures applicable to all filers are also covered under the new OMB Control Number (1545–2315).

In the Notice of Proposed Rulemaking, the Treasury Department and the IRS requested public comments on the proposed collections of information including: (i) whether the proposed collection of information is necessary for the proper performance of the functions of the IRS; (ii) the accuracy of the estimated burden associated with the proposed collection of information; (iii) how the quality, utility, and clarity of the information to be collected may be enhanced; (iv) how the burden of complying with the proposed collection of information may be minimized; and (v) estimates of

capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

One commenter suggested the Treasury Department and the IRS provide additional clarification regarding the estimated time for filers to find and display the prevailing wage rates and to request qualified apprentices from registered apprenticeship programs. One commenter suggested that the estimate failed to consider additional actions related to complying with PWA rules, such as tracking the payment of prevailing wages and usage of qualified apprentices. Commenters stated that it may take some taxpayers more than two hours annually to find and display the prevailing wage rates and to request qualified apprentices from registered apprenticeship programs. Another commenter expressed confusion over the difference in the proposed compliance time required by trusts and estate in comparison to all other filers.

The Treasury Department and the IRS agree that the estimated annual burden with respect to the reporting and recordkeeping requirements of these final regulations can be clarified. The preamble to the NPRM estimated these recordkeeping and reporting obligations necessary for compliance with the PWA Requirements will take 40 hours annually. This estimate was submitted as part of seeking a new OMB control number with respect to trust and estate filers. The estimate will also be submitted to OMB as part of the annual approval process with respect to the OMB control numbers that already exist for other filers.³⁷ This estimate includes time necessary for taxpayers to become familiar with the obligations set forth in these regulations. Much of the data taxpayers will be required to maintain, such as the applicable prevailing wage rates, is readily available from DOL websites. Additionally, the recordkeeping requirements with respect to amounts paid to laborers and mechanics are similar to existing requirements imposed by other law. While exact data is not available to estimate the additional burden imposed by these regulations, the Treasury Department and the IRS have retained the estimate of 40 hours.

The commenters also suggested that the two hours estimated for all filers with respect to the third-party disclosures did not properly account for the expected burdens. The Treasury

³⁷ Additional information on taxpayer compliance burdens can be found in Publication 5743, IRS Taxpayer Compliance Burden, <https://www.irs.gov/pub/irs-pdf/p5743.pdf>.

Department and the IRS agree with this comment and have revised the estimate to account for the burden of complying with the Apprenticeship Requirements. The final regulations require taxpayers to request qualified apprentices from an apprenticeship program with an area of operation that includes the location of the facility and may require taxpayers to submit additional requests on an annual basis if requests have been denied. Further, the final regulations will require taxpayers to review the standards and requirements of the registered apprenticeship program as part of making a request, which will likely take more than the two hours estimated as part of the preamble to the proposed regulations. Accordingly, the Treasury Department and the IRS have determined that the estimated burden to comply with the third-party disclosures is four hours instead of two hours.

No other public comments were received by the IRS directed specifically at the PRA or on the collection requirements, but commenters generally articulated the burdens associated with the documentation requirements contained in the Proposed Regulations. As described in the relevant portions of this preamble, the Treasury Department and the IRS believe that the documentation requirements are necessary to administer the increased credit amounts resulting from compliance with the PWA requirements.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not determined whether the final regulations will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. Because there is a possibility of significant economic impact on a substantial number of small entities, a FRFA is provided in these final regulations.

Pursuant to section 7805(f) of the Code, the Proposed Regulations were

submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business. The Treasury Department and the IRS also requested comments generally with respect to the number of entities affected by the Proposed Regulations and the economic impact on small entities.

A. Need for and Objectives of the Rule

The final regulations provide clarifying guidance for taxpayers intending to satisfy the PWA requirements to qualify for the increased amounts of credit or deduction under sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48C, and 179D and for those taxpayers intending to satisfy the Prevailing Wage Requirements to qualify for the increased credit amounts under sections 45L and 45U. These final regulations provide needed guidance for taxpayers on obtaining and using applicable wage determinations issued by the DOL, on the time and manner for reporting compliance with the PWA requirements, as well as needed definitions. The final regulations also provide guidance concerning correction and penalty payments that can be made by taxpayers who initially fail to satisfy the PWA requirements in order to qualify for the increased amounts of credit and deduction.

The Treasury Department and the IRS expect that the increased amounts of credit and deduction of five times the base amount of credit or deduction for taxpayers that ensure the payment of paying prevailing wages and hiring qualified apprentices in the construction, alteration, or repair of qualified facilities provides financial incentives that will beneficially impact various industries involved in the investment in and production of clean energy. These final regulations provide clarifying guidance that will assist taxpayers seeking to comply with the statutory PWA requirements in order to take advantage of the financial incentives. In the absence of this clarifying guidance, taxpayers would be required to rely solely upon the language of the Code in determining how to comply with the PWA requirements, which would likely deter many taxpayers from seeking the increased amounts of credit and deduction and would otherwise greatly increase the costs of compliance for taxpayers choosing to pursue the credits. The Treasury Department and the IRS expect that the increased credit and deduction amounts available to taxpayers as financial incentives will exceed the costs of the additional

recordkeeping and reporting obligations imposed on taxpayers by these regulations beyond those otherwise be required by the statute.

The Treasury Department and the IRS also expect the financial incentives of the increased amounts of credit and deduction for taxpayers that ensure payment of prevailing wage rates and use of qualified apprentices will deliver benefits across the economy by creating increased opportunities for contractors and subcontractors as well as laborers and mechanics to become involved in clean energy production. Allowing these increased amounts of credits and deduction for taxpayers who satisfy the PWA requirements will incentivize expansion of clean energy resources and will reduce economy wide greenhouse gas emissions.

B. Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

The Small Business Administration's Office of Advocacy provided comments on the initial regulatory flexibility analysis (IRFA) set forth in the Proposed Regulations. Specifically, the Office of Advocacy commented that the IRFA did not adequately describe regulated small entities, that the IRFA did not adequately estimate potential impacts to regulated small entities, and that the IRFA did not adequately discuss specific alternatives that might reduce the impact on small entities.

Other comments were received on the burdens associated with the PWA requirements, including burdens on small businesses. One commenter requested that the process for obtaining wage determinations from the DOL be streamlined to avoid delays that might increase uncertainty and costs for contractors. Another commenter suggested that because prevailing wage rates are subject to change, the PWA requirements create uncertainty and risk that will increase costs for construction projects. One commenter suggested reducing the burden on small businesses to qualify for the Good Faith Effort Exception. Another commenter proposed that the Treasury Department and the IRS decline to impose penalties for any failure to satisfy the Participation Requirement with respect to any contractor or subcontractor that qualifies as a "small business" under the U.S. Small Business Administration's "Table of Size Standards".

The Treasury Department and the IRS have made a number of revisions to these final regulations to assist taxpayers, including small businesses, and reduce the burdens associated with

complying with the PWA requirements. These revisions are discussed in this Summary of Comments and Explanation of Revisions of the preamble to these regulations and in this FRFA.

C. Affected Small Entities

The RFA directs agencies to provide a description of, and if feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The Small Business Administration's (SBA) Office of Advocacy estimates in its 2023 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these Proposed Regulations does not depend on the size of the business, as defined by the SBA. These final regulations may affect a variety of different entities across several different green energy industries as they prescribe rules with respect to ten different sections of the Code with provisions related to increased amounts of credit and deduction.

The Office of Advocacy commented that the IRFA did not describe or estimate the number of impacted small entities and did not provide information related to such entities such as the North American Industry Classification System (NAICS) classifications. The Office of Advocacy also commented that because the regulation requires taxpayers to verify compliance for contracted work, that the Proposed Regulations were directly regulating the contractors hired to perform the work and that the IRFA failed to consider the impact of the proposed rules on these contractors and subcontractors, many of which are likely small businesses. The Treasury Department and the IRS utilize tax data as the basis for its Regulatory Flexibility Act analysis. Tax entities supply information on tax forms, which information is processed and recorded by the IRS. This data is then available to the IRS office of Research, Applied Analytics and Statistics and to the Treasury Department's Office of Tax Policy for use in estimating the impact of tax regulation on businesses.

Tax data is the more appropriate data as it provides nearly universal coverage of the entities that are affected by these tax regulations. All taxpayers and many potential taxpayers are represented in the universe of tax data. Second, the tax data more accurately reflect the level of organization to which tax regulations are applicable because tax data is collected on the entity rather than the enterprise level. Overwhelmingly, business tax regulations apply to the entity level making tax data a natural fit for the analysis of regulatory impact.

Further, with limited exceptions, tax regulations apply to all entities organized in a particular manner regardless of industry or size. Finally, analysis of the implications of tax regulations for the purposes of the Paperwork Reduction Act and any Special Analyses, including the Regulatory Impact Analysis, are carried out using tax data. Generally, restricting analysis for the RFA to tax data prevents difficulties in reconciling the different analyses within a given regulation.

Reliance on tax data has some drawbacks. In general, tax forms do not collect information unless it is directly relevant to the calculation of tax liability. The NAICS codes referenced by the Office of Advocacy are included on tax forms for informational purposes and may not be reliable. For example, past the first two-digits of the NAICS code, economic sector level, entries may be left blank in the raw data. In addition, for a tax entity that is comprised of multiple different enterprises that each operate in a different industry, the NAICS code reported on a tax form may not reflect the appropriate industry for the regulation under analysis. Furthermore, most tax returns have no independent verification of the accuracy of NAICS codes. Notwithstanding this concern, tax data remains the most appropriate data for analysis of the implications of tax regulations.

The Treasury Department and the IRS have considered other data alternatives including Census data sources, such as the Statistics of U.S. Businesses (SUSB) suggested by SBA's Office of Advocacy. The 2020 SUSB includes only six million firms and eight million establishments while the proposed tax data include approximately 18 million business entities. Unlike the SUSB data, the tax data include more small businesses, not only ones with at least one employee. Tax data provide a more inclusive estimate of businesses affected by tax regulations. In conclusion, while tax data are an appropriate resource for evaluating the impact of tax regulations, this data does not permit some of the usual analysis presented to the SBA. Furthermore, since the NAICS codes reported on the tax return may not accurately reflect the industry of the entity, applying separate standards by industry is inadvisable.

Thus, the Treasury Department and the IRS have determined that reliance on NAICS codes would not accurately reflect the entities affected by these regulations. Further, the Treasury Department and the IRS currently do not have useable tax data that reflects the entities that will be affected by these

regulations. While there is uncertainty as to the exact number of small businesses within this group, the Treasury Department and the IRS continue to estimate that approximately 70,000 taxpayers will be impacted as described in the preamble to the Proposed Regulations.

With respect to the Office of Advocacy's comments regarding the regulation of contractors and subcontractors, these regulations provide guidance for taxpayers that seek the increased amounts of credit and deduction provided under the IRA by ensuring the payment of prevailing wage rates and the use of qualified apprentices with respect to the construction of qualified facilities. The regulations do not directly regulate the contractors and subcontractors who may be hired by taxpayers. The taxpayers claiming the increased amounts of credit and deduction are the entities responsible for compliance with the PWA requirements. While the final regulations set forth and incentivize various practices, taxpayers retain flexibility to determine how best to ensure compliance with the statutory requirements and the recordkeeping and reporting obligations imposed as part of these final regulations.

D. Impact of the Rules

These final regulations provide rules for how taxpayers can satisfy the PWA requirements in order to seek the increased credit amounts under section 45 as well as the increased amounts of credit or deduction available under sections 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48C, and 179D. Taxpayers that seek to claim the increased amount of credit or deduction will have administrative costs related to reading and understanding these final regulations, as well as increased costs for the recordkeeping and reporting requirements necessary to establish compliance with the PWA requirements. The costs will vary across different-sized taxpayers and across the type of facilities and projects in which such taxpayers are engaged.

The Prevailing Wage Requirements require the taxpayer to obtain the published wage determination issued by the DOL for the county in which the facility is located. To the extent a wage determination does not include a required classification, or if no wage determination has been published, the taxpayer is required to contact the DOL to obtain a supplemental wage determination or a wage rate for an additional classification. The taxpayer is required to ensure that any contractor or subcontractor that works on the

construction, alteration, or repair of a facility has paid hourly wages in accordance with the applicable wage determination for each classification required to complete such work. In order to be eligible for certain cure provisions, the taxpayer is required to know or be able to determine whether the laborers and mechanics employed for construction, alteration, or repair of the facility were paid in accordance with the applicable wage determination. Additionally, the taxpayer is required to retain records sufficient to establish compliance for as long as may be relevant. The Treasury Department and the IRS expect that some of the recordkeeping that is required under these rules will be consistent with recordkeeping requirements already imposed under the DBA and the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

In adopting these final regulations, the Treasury Department and the IRS have made several revisions that will ease burdens for taxpayers. A few commenters commented on the time that will be required for taxpayers and contractors to read and understand these regulations. In a number of instances, the final regulations have been revised in response to comments to assist taxpayers with understanding the rules, including through clarifying explanations in the preamble, edits to the regulatory text, and additional examples.

Other changes have been made throughout these regulations that will reduce burdens on taxpayers. The Proposed Regulations would have established the time that construction starts as the applicable time for taxpayers and contractors to determine applicable wage rates. Commenters stated this would be burdensome for taxpayers to determine labor costs and could require the renegotiation of contracts that have been executed. In response to these comments, the final regulations provide that generally the applicable prevailing wage rates are determined at the time a taxpayer (or the taxpayer's designee, assignee, or agent) executes the contract for the construction, alteration, or repair of the facility with a contractor. The final regulations also provide transition rules that delay the start of the PWA Requirements to assist taxpayers with complying with the PWA requirements. Under the transition rules, the PWA requirements only apply for work performed on or after January 29, 2023, which follows the issuance of the initial guidance on the PWA requirements by the Treasury Department and the IRS. The final regulations also prescribe

penalty waivers for taxpayers who make limited errors in compliance with the Prevailing Wage Requirements. In response to comments, the threshold to qualify for the penalty waivers has been increased to underpayments that do not exceed five percent of all amounts required to be paid in a calendar year to make the penalty waiver more accessible to taxpayers with small failures.

For the Apprenticeship Requirements, the taxpayer, contractor, or subcontractor, is required to contact a registered apprenticeship program for purposes of requesting the dispatch of qualified apprentices to work on the construction, alteration, or repair of the facility. Whether or not the registered apprenticeship program dispatches qualified apprentices, the taxpayer is required to maintain and preserve records to establish compliance for as long as may be relevant.

The Apprenticeship Requirements have also been revised in these final regulations that will reduce burdens for taxpayers. In response to several comments, the final regulations clarify that the requirement to use qualified apprentices only applies with respect to the construction of a facility prior to the facility being placed in service, and does not apply to alterations or repairs after the facility is placed in service. Several comments were received on the burden of the Proposed Regulations that would have required the renewal of requests for qualified apprentices every 120 days for taxpayers to continue to qualify for the Good Faith Effort Exception. These final regulations have extended the 120-day period to provide that qualified apprentices only need to be requested on an annual basis to qualify for the Good Faith Effort Exception. This revision reduces burdens for taxpayers and contractors who would have been required to evaluate labor needs on a frequent basis and provides taxpayers and their contractors with flexibility to make hiring decisions over a longer period of time.

The taxpayer claiming the increased credit or deduction amount is required to report the payment of prevailing wages and the utilization of qualified apprentices consistent with the forms and instructions of the IRS. Although the Treasury Department and the IRS do not have sufficient data to precisely determine the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in Section II. of this Special Analyses pertaining to the Paperwork Reduction Act.

E. Alternatives Considered

The Treasury Department and the IRS considered alternatives to these final regulations. The Office of Advocacy commented that the recordkeeping and reporting requirements of the Proposed Regulations would likely discourage small entities from bidding on clean energy projects because they will incur heightened compliance costs without sharing in the financial benefits of the increased amounts of credit and deduction. In contrast, several commenters recommended that the Treasury Department and the IRS adopt additional pre-filing enforcement processes to ensure that laborers and mechanics are paid wages at rates not less than the applicable prevailing wage rates. Commenters suggested that that final regulations impose significant additional reporting and recordkeeping requirements, including many pre-filing reporting requirements such as certified weekly payroll and monthly apprenticeship hours reporting.

The final regulations strike an appropriate balance between these alternatives that minimizes burdens for taxpayers and their contractors while also ensuring that laborers and mechanics are paid wages at rates not less than the applicable prevailing wage rates, and ultimately that the IRS has sufficient information to administer the provisions related to increased amounts of credit and deduction that are claimed on returns filed by taxpayers. Thus, the final regulations do not adopt the pre-filing alternatives urged by the commenters, including the DBA requirement of submitting weekly certified payroll records to the IRS. The submission of weekly payroll records to the IRS by taxpayers would not assist the IRS with the efficient administration of the increased credit amount provisions and would increase burdens for taxpayers. The Treasury Department and the IRS also considered an alternative requirement that taxpayers submit payroll records for all laborers and mechanics at the time of filing a return that claims an increased credit amount. The Treasury Department and the IRS determined that per-laborer and per-mechanic payroll records would not provide the IRS with useful information and would also involve substantial burdens for taxpayers to report such information.

The Office of Advocacy also commented that the IRFA did not analyze how the Proposed Regulations treatment of PLAs would increase the compliance costs of the regulation to small construction firms because they primarily use non-union labor. As

discussed in Section V.D. of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have determined that PLAs may help taxpayers comply with the PWA requirements. Further, studies show that PLAs do not necessarily increase construction costs. Lastly, a taxpayer may choose to use a PLA for construction of its facility; it is not a mandate.

A few commenters expressed concern regarding the potential of the PWA requirements to inflate construction costs, increase the time to complete clean energy projects, and lessen the participation of small businesses in such projects. Commenters opined that by using the DBA prevailing wage rates, the Treasury Department and the IRS were setting wage standards using a process that is flawed and inaccurate, and that will have inflationary impacts on construction costs. The Prevailing Wage Requirements for an increased credit (or deduction) amount are set forth in the various provisions of the IRA that direct the use of prevailing wage rates as determined by the Secretary of Labor in accordance with the DBA. Thus, alternatives to using the DBA prevailing rates were not adopted in the final regulations as they would lack a statutory basis. Further, DOL processes for setting wage standards is within the DOL's jurisdiction and thus outside the scope of these final regulations.

F. Duplicative, Overlapping, or Conflicting Federal Rules

For facilities built under contracts with the Federal Government, or with Federal financial or other assistance provided under a Davis-Bacon Related Act, the final regulations may overlap with the rules under the DBA, 29 CFR parts 1, 5, and 7. In all other instances, the final regulations do not duplicate, overlap, or conflict with any relevant Federal rules.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

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

Executive Order 13175 (Consultation and Coordination with Indian Tribal governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. On September 25, 2023, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the Proposed Regulations, which informed the development of these final regulations.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these final regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Office of Chief Counsel, the Treasury Department, and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries for §§ 1.30C–3, 1.45–6 through 1.45–8, 1.45–12, 1.45L–3, 1.45Q–6, 1.45U–3, 1.45V–3, 1.45Y–3, 1.45Z–3, 1.48C–3, and 1.179D–3 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.30C–3 also issued under 26 U.S.C. 30.

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Section 1.45–6 also issued under 26 U.S.C. 45.

Section 1.45–7 also issued under 26 U.S.C. 45.

Section 1.45–8 also issued under 26 U.S.C. 45.

Section 1.45–12 also issued under 26 U.S.C. 45.

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Section 1.45L–3 also issued under 26 U.S.C. 45L.

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Section 1.45Q–6 also issued under 26 U.S.C. 45Q.

Section 1.45U–3 also issued under 26 U.S.C. 45U.

Section 1.45V–3 also issued under 26 U.S.C. 45V.

Section 1.45Y–3 also issued under 26 U.S.C. 45Y.

Section 1.45Z–3 also issued under 26 U.S.C. 45Z.

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Section 1.179D–3 also issued under 26 U.S.C. 179D.

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■ **Par. 2.** Sections 1.30C–1 through 1.30C–3 are added to read as follows:

§§ 1.30C–1—1.30C–2 [Reserved]

§ 1.30C–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified alternative fuel vehicle refueling project (as defined by section 30C(g)(1)(B)) placed in service during the taxable year satisfies the requirements in paragraph (b) of this section, the credit determined under section 30C(a) for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of such project is multiplied by five.

(b) *Qualified alternative fuel vehicle refueling project requirements.* A qualified alternative fuel vehicle

refueling project satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A project the construction of which began prior to January 29, 2023; or

(2) A project that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12, all with respect to the construction of any qualified alternative fuel refueling property within the meaning of section 30C before such project is placed in service.

(c) *Applicability date.* This section applies to qualified alternative fuel vehicle refueling projects placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified alternative fuel vehicle refueling projects placed in service in taxable years ending on or before June 25, 2024, and qualified alternative fuel vehicle refueling projects placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

■ **Par. 3.** Sections 1.45–0 through 1.45–12 are added to read as follows:

Sec.

* * * * *

1.45–0 Table of contents.

1.45–1—1.45–5 [Reserved]

1.45–6 Increased credit amount.

1.45–7 Prevailing wage requirements.

1.45–8 Apprenticeship requirements.

1.45–9—1.45.11 [Reserved]

1.45–12 Recordkeeping and reporting.

* * * * *

§ 1.45–0 Table of contents.

This section lists the table of contents for §§ 1.45–1 through 1.45–12.

§§ 1.45–1—1.45–5 [Reserved]

§ 1.45–6 Increased credit amount.

(a) In general.

(b) Qualified facility requirements.

(c) Definition of nameplate capacity for purposes of determining maximum net output under section 45(b)(6)(B)(i).

(d) Applicability date.

§ 1.45–7 Prevailing wage requirements.

(a) Prevailing wage requirements.

(b) Wage determinations.

(c) Curing a failure to satisfy the prevailing wage requirements.

(d) Definitions.

(e) Applicability date.

§ 1.45–8 Apprenticeship requirements.

(a) Apprenticeship requirements.

(b) Labor hours requirement.

(c) Ratio requirement.

(d) Participation requirement.

(e) Examples.

(f) Exceptions to the apprenticeship requirements.

(g) Definitions.

(h) Applicability date.

§§ 1.45–9—1.45–11 [Reserved]

§ 1.45–12 Recordkeeping and reporting.

(a) In general.

(b) Recordkeeping for the prevailing wage and apprenticeship requirements.

(c) Recordkeeping for the prevailing wage requirements.

(d) Recordkeeping for the apprenticeship requirements.

(e) Satisfaction of the recordkeeping requirements.

(f) Applicability date.

§§ 1.45–1—1.45–5 [Reserved]

§ 1.45–6 Increased credit amount.

(a) *In general.* If a qualified facility (as defined in section 45) satisfies the requirements in paragraph (b) of this section, the amount of the renewable electricity production credit determined under section 45(a) (after the application of section 45(b)(1) through (5)) is equal to the credit determined under section 45(a) multiplied by five.

(b) *Qualified facility requirements.* A qualified facility satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A facility with a maximum net output (as determined under paragraph (c) of this section) of less than one megawatt (as measured in alternating current);

(2) A facility the construction of which began prior to January 29, 2023; or

(3) A facility that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12.

(c) *Definition of nameplate capacity for purposes of determining maximum net output under section 45(b)(6)(B)(i).* For purposes of determining whether a facility has a maximum net output of less than one megawatt (as measured in alternating current) for purposes of section 45(b)(6)(B)(i), nameplate capacity is determinative. *Nameplate capacity* for an electrical generating unit means the maximum electrical generating output in megawatts that the unit is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and

consistent with the definition provided in 40 CFR 96.202. If applicable, the International Standard Organization (ISO) conditions are used to measure the maximum electrical generating output or usable energy capacity.

(d) *Applicability date.* This section applies to qualified facilities placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified facilities placed in service in taxable years ending on or before June 25, 2024, and qualified facilities placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

§ 1.45–7 Prevailing wage requirements.

(a) *Prevailing wage requirements—(1) In general.* Except as provided in paragraphs (a)(2), (3), and (c) of this section, a taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6)(B)(iii) with respect to any qualified facility must satisfy the requirements of section 45(b)(7) and this section by ensuring that all laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such facility, and with respect to any taxable year, for any portion of such taxable year that is within the 10-year period beginning on the date the qualified facility was placed in service, the alteration or repair of such facility, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located (Prevailing Wage Requirements). If alteration or repair of a qualified facility occurs during any portion of such taxable year(s) within the 10-year period after the qualified facility was placed in service, the Prevailing Wage Requirements apply with respect to such taxable year(s) in which that alteration or repair occurs. If no alteration or repair work occurs during the taxable year(s) with respect to the qualified facility after the facility is placed in service, the taxpayer is deemed to satisfy the Prevailing Wage Requirements with respect to such taxable year. Prevailing rates are those rates most recently determined by the Secretary of Labor in accordance with 40 U.S.C. chapter 31, subchapter IV (Davis-Bacon Act), and as set forth in paragraph (b) of this section. See paragraph (d) of this section for definitions of terms used in this section.

(2) *Transition relief.* Taxpayers are excepted from the Prevailing Wage Requirements with respect to any activities that would be considered construction, alteration, or repair of the qualified facility and that occurred prior to January 29, 2023.

(3) *Relief for Indian Tribal governments.* An Indian Tribal government, as defined in section 30D(g)(9), and including any subdivision, agency, or instrumentality of the Indian Tribal government, is excepted from the Prevailing Wage Requirements with respect to laborers and mechanics that are employees, within the meaning of section 3121(d)(2), of the Indian Tribal government. This paragraph (a)(3) also applies to a qualified facility that is subject to joint ownership arrangements that involve an Indian Tribal government, including any subdivision, agency, or instrumentality of the Indian Tribal government. However, any activity that would be considered construction, alteration, or repair of the qualified facility that is not performed by Indian Tribal government employees (within the meaning of section 3121(d)(2)), but that is instead performed by or through a contractor or subcontractor, is subject to the Prevailing Wage Requirements described in this paragraph (a).

(b) *Wage determinations—(1) In general.* A taxpayer satisfies the Prevailing Wage Requirements with respect to a qualified facility, if the taxpayer ensures that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of the facility are paid wages at rates not less than those set forth in the applicable wage determination issued by the Secretary of Labor pursuant to 40 U.S.C. 3142, 29 CFR part 1, and other implementing guidance for the specified type of construction in the geographic area where that facility is located. If the construction, alteration, or repair of a facility occurs in more than one geographic area, the taxpayer, contractor, or subcontractor must use the applicable wage determination for the work performed in each geographic area. Subject to the requirements of this section, the applicable wage determination is a general wage determination described in paragraph (b)(2) of this section (including any additional classifications and wage rates described in paragraph (b)(3) of this section), or a supplemental wage determination described in paragraph (b)(3) of this section.

(2) *General wage determinations—(i) In general.* Except as provided in

paragraph (b)(3) of this section, to satisfy the Prevailing Wage Requirements described in paragraph (a) of this section with respect to a qualified facility, taxpayers must ensure that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of the facility are paid wages at rates not less than those set forth in the applicable general wage determination(s) published by the U.S. Department of Labor on the approved website. The applicable general wage determination is the general wage determination in effect for the specified type of construction in the geographic area at the time a contract for the construction, alteration, or repair of the facility is executed by the taxpayer (or the taxpayer's designee, assignee, or agent) and any contractor. The applicable general wage determination will continue in effect for any additional contracts executed by such contractor with any subcontractors with respect to the construction, alteration, or repair of the facility. In the absence of a contract (or if the date of execution of the contract cannot be reasonably determined), the applicable general wage determination is the general wage determination in effect for the specified type of construction in the geographic area when the construction, alteration, or repair of the facility starts.

(ii) *Wage determinations applicable to Indian Tribal governments.* If the taxpayer is an Indian Tribal government, as defined in section 30D(g)(9), including any subdivision, agency, or instrumentality of the Indian Tribal government, and the construction, alteration, or repair of a qualified facility occurs on Indian land, as defined in 25 U.S.C. 3501(2), that encompasses or overlaps with more than one geographic area with respect to which the U.S. Department of Labor has issued a general wage determination, the Indian Tribal government may choose the general wage determination applicable for any one of those geographic areas and apply that general wage determination for work performed on any qualified facility that is located on the Indian land. This paragraph (b)(2)(ii) also applies to a qualified facility that is subject to joint ownership arrangements that involve an Indian Tribal government, including any subdivision, agency, or instrumentality of the Indian Tribal government. If the Indian Tribal government chooses to use a single general wage determination under this paragraph (b)(2)(ii), it must maintain and preserve records sufficient to document the applicable prevailing

wage rates for each laborer and mechanic employed by the Indian Tribal government or any contractor or subcontractor with respect to each qualified facility on Indian land.

(3) *Supplemental wage determinations and additional classifications and rates—(i) Use of supplemental wage determinations and additional classifications and rates.* In the event the Secretary of Labor has not issued a general wage determination for the relevant geographic area and type of construction for the facility, or the Secretary of Labor has issued a general wage determination for the relevant geographic area and type of construction, but one or more labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not listed, the taxpayer must ensure that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates not less than those set forth in a supplemental wage determination or in an additional classification and wage rate issued to the taxpayer by the U.S. Department of Labor upon request by the taxpayer, contractor, or subcontractor in accordance with paragraph (b)(3)(ii) of this section. A taxpayer, contractor, or subcontractor may also request a supplemental wage determination if the location of the facility involves work by covered laborers and mechanics that spans more than one contiguous geographic area.

(ii) *Request for supplemental wage determinations and additional classifications and rates—(A) Manner of making request.* A taxpayer, contractor, or subcontractor requesting a supplemental wage determination or additional classification and wage rate under paragraph (b)(3)(i) of this section must submit the request to the U.S. Department of Labor at, U.S. Department of Labor, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, DC 20210, by email at IRAPrevailingwage@dol.gov, or such other address as may be prescribed in guidance and instructions issued by the Administrator of the Wage and Hour Division of the U.S. Department of Labor (Wage and Hour Division).

(B) *Timing of supplemental wage determination requests.* A taxpayer, contractor, or subcontractor should make requests for a supplemental wage determination no more than 90 days before the taxpayer (or the taxpayer's designee, assignee, or agent) expects to execute the contract for the

construction, alteration, or repair of the facility with a contractor. In the absence of a contract, the taxpayer, contractor, or subcontractor should make such requests no more than 90 days before construction, alteration, or repair of the facility starts.

(C) *Timing of requests for prevailing wage rates for additional classifications.* A request for prevailing wage rates for additional classifications can be made any time after a contract for the construction, alteration, or repair of a facility has been executed between the taxpayer (or the taxpayer's designee, assignee, or agent) and a contractor. In the absence of a contract, the taxpayer, contractor, or subcontractor should make such requests no more than 90 days before construction, alteration, or repair of the facility starts. If the taxpayer, contractor, or subcontractor cannot reasonably determine prior to execution of the contract between the taxpayer (or the taxpayer's designee, assignee, or agent) and the contractor or prior to the start of the construction, alteration, or repair work that an additional classification and wage rate is necessary, the taxpayer, contractor, or subcontractor should make such request as soon as practicable after determining that an additional classification and wage rate is necessary.

(D) *Required information.* The request for a supplemental wage determination or additional classification and wage rate must include the following information:

(1) The name of the taxpayer, contractor, or subcontractor requesting the supplemental wage determination or wage rate;

(2) The general wage determination(s), if any, applicable to construction, alteration, or repair of the facility;

(3) A description of the work to be performed, including the type(s) of construction involved and, if the project involves multiple types of construction, information indicating the expected cost breakdown by type of construction;

(4) The geographic area in which the facility is being constructed, altered, or repaired, including the name and address of the facility (if known);

(5) The date the taxpayer (or the taxpayer's designee, assignee, or agent) expects to enter into a contract with a contractor for which a supplemental wage determination is needed or the date of execution of the contract with a contractor for which a prevailing wage rate for an additional classification is needed;

(6) The start date of construction, alteration, or repair at the facility;

(7) The labor classification(s) needed for performance of the work on the

facility (excluding those for which wage rates are available on an applicable general wage determination);

(8) The duties to be performed by each such labor classification on the facility;

(9) The proposed wage rate, including any bona fide fringe benefits, for each such labor classification;

(10) Any pertinent wage payment information that may be available;

(11) Any additional relevant information otherwise required by forms and instructions published by the U.S. Department of Labor; and

(12) Any additional information the taxpayer, contractor, or subcontractor wants the U.S. Department of Labor to consider.

(iii) *Issuance of supplemental wage determinations and additional classifications and wage rates.* After review, the Wage and Hour Division will notify the taxpayer, contractor, or subcontractor as to the supplemental wage determination or the labor classifications and wage rates to be used for the type of work in question in the geographic area in which the facility is located. Supplemental wage determinations issued by the Wage and Hour Division are effective for 180 calendar days from the date such determinations are issued. If a supplemental wage determination is not incorporated into the contract (or, in the absence of a contract, if construction has not started) during the 180-day period, the determination is no longer effective, and a new supplemental wage determination will need to be requested. The Wage and Hour Division will resolve requests for a prevailing wage rate for an additional classification within 30 days of receipt of the request or will advise the requester within the 30-day period that additional time is necessary.

(iv) *Special rule for qualified facilities located offshore.* If a general wage determination is not available, in lieu of requesting a supplemental wage determination for a qualified facility located in an offshore area within the outer continental shelf of the United States, a taxpayer, contractor, or subcontractor may rely on the general wage determination for the relevant category of construction that is applicable in the geographic area closest to the area in which the qualified facility will be located.

(4) *Reconsideration and review.* A taxpayer, contractor, or subcontractor may seek reconsideration and review by the Administrator of the Wage and Hour Division of a general wage determination, or a determination issued with respect to a request for a

supplemental wage determination or additional classification and wage rate in accordance with the procedures set forth in 29 CFR 1.8 and 5.13 and any subsequent guidance issued by the U.S. Department of Labor. A taxpayer, contractor, or subcontractor may appeal the decision of the Administrator of the Wage and Hour Division to the U.S. Department of Labor's Administrative Review Board in accordance with the procedures set forth in 29 CFR part 7 and any subsequent guidance issued by the U.S. Department of Labor. Questions regarding wage determinations and rates may be referred to the Administrator of the Wage and Hour Division.

(5) *Timing of wage determination.* The applicable prevailing wage rates on a general wage determination are those in effect at the time a contract for the construction, alteration, or repair of the qualified facility is executed by the taxpayer (or the taxpayer's designee, assignee, or agent) and a contractor. After the qualified facility is placed in service, the applicable prevailing wage rates on a general wage determination for the alteration or repair of a qualified facility are those in effect at the time the contract for the alteration or repair work is executed by the taxpayer (or the taxpayer's designee, assignee, or agent) and a contractor. The applicable prevailing wage rates on a general wage determination at the time such contract is executed apply to all subcontractors of that contractor. If a taxpayer (or the taxpayer's designee, assignee, or agent) executes separate contracts with more than one contractor with respect to the construction, alteration, or repair of the qualified facility, then, for each such contract, the applicable prevailing wage rates with respect to any work performed by the contractor (and all subcontractors of the contractor) are determined at the time the contract is executed by the taxpayer (or the taxpayer's designee, assignee, or agent). If no contract exists with respect to the construction, alteration, or repair of the qualified facility (or if the date of execution of the relevant contract cannot be reasonably determined), the applicable prevailing wage rates on a general wage determination are those in effect at the time the construction, alteration, or repair work starts. The applicable prevailing wage rates of a general wage determination generally remain valid for the duration of the work performed with respect to the construction, alteration, or repair of the qualified facility by the taxpayer, contractor, or subcontractor. A new general wage determination is required to be used if the contract between the

taxpayer (or the taxpayer's designee, assignee, or agent) and the contractor for work on a facility is modified to include additional substantial construction, alteration, or repair work not within the scope of work of the original contract, or to require work to be performed for an additional time period not originally obligated, including if an option to extend the term of a contract for the construction, alteration, or repair is exercised. A new general wage determination is not required if the contractor is simply given additional time to complete its original commitment or if the additional construction, alteration, and/or repair work in the modification of the contract is merely incidental. In circumstances in which a new general wage determination is required, the applicable prevailing wage rates on a general wage determination are those in effect at the time the additional substantial work is agreed to or at the time when an option to extend the term of the contract is executed. If a taxpayer enters into a contract for alteration or repair work over an indefinite period of time that is not tied to the completion of any specific work, the applicable prevailing wage rates must be updated on an annual basis on the anniversary date of such contract. General wage determinations published on the U.S. Department of Labor approved website contain no expiration date and remain valid until revised, superseded, or canceled. Any supplemental wage determination issued under paragraph (b)(3) of this section applies without expiration from the time the taxpayer incorporates the supplemental wage determination into the contract provided that the supplemental wage determination is incorporated into the contract within 180 days of issuance of the supplemental wage determination. If there is no contract, any supplemental wage determination issued under paragraph (b)(3) of this section applies without expiration from the time construction, alteration, or repair starts provided the construction, alteration, or repairs starts within 180 days of issuance of the supplemental determination. Any additional classification and wage rate issued under paragraph (b)(3) of this section applies without expiration from the earlier of the date of issuance or the first day in which work in the additional classification was performed. If a supplemental wage determination or additional classification and wage rate is issued after construction, alteration, or repair of the facility has started, the applicable prevailing rates apply

retroactively to the date construction started.

(6) *Payment of wages.* All laborers and mechanics working on a qualified facility must be paid in the time and manner consistent with the regular payroll practices of the taxpayer, contractor, or subcontractor, as applicable. The payment of wages must be made without subsequent deduction or rebate on any account (except such payroll deductions as are required by the law or permitted by regulations issued by the Secretary of Labor), and must consist of the full amount of wages (including bona fide fringe benefits or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor. A taxpayer may discharge its wage obligations for the payment of wages by paying the full amount in cash, by making payments to a bona fide fringe benefit provider or incurring costs for bona fide fringe benefits, or by a combination thereof. The taxpayer is solely responsible for ensuring that laborers and mechanics are paid wages not less than the prevailing rate whether employed directly by the taxpayer, a contractor, or a subcontractor in the construction, alteration, or repair of the qualified facility for purposes of claiming the increased credit amount under section 45(b)(6)(B)(iii). The rules set forth in 29 CFR 5.25 through 5.33, and any subsequent guidance issued by the U.S. Department of Labor apply with respect to costs for bona fide fringe benefits that may be credited for purposes of the payment of wages.

(7) *Apprentices—(i) Rate of pay.* Apprentices who perform work with respect to the construction, alteration, or repair of a qualified facility consistent with the requirements of section 45(b)(8) and § 1.45–8 may be paid wages at rates that are less than the rates that would otherwise apply under paragraph (a) of this section. Every apprentice must be paid wages at rates not less than the rates specified by the registered apprenticeship program for the apprentice's level of progress, expressed as a percentage of the journeyworker hourly rate specified for the apprentice's classification in the applicable wage determination. If the apprentice is working in a classification that is not part of the occupation of the registered apprenticeship program, the apprentice must be paid not less than the applicable wage rate on the wage determination for laborers or mechanics working in that classification. Any individual listed on payroll at an apprenticeship wage, who is not participating in a registered

apprenticeship program, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed to satisfy the Prevailing Wage Requirements. In the event the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency recognized by the U.S. Department of Labor's Office of Apprenticeship withdraws approval of an apprenticeship program, the taxpayer, contractor, or subcontractor will no longer satisfy the Prevailing wage Requirements by paying apprentices less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Bona fide fringe benefits.* To satisfy the Prevailing Wage Requirements, apprentices must be paid bona fide fringe benefits in accordance with the provisions of the registered apprenticeship program. If the apprenticeship program does not specify the payment of bona fide fringe benefits, apprentices must be paid the full amount of bona fide fringe benefits listed on the wage determination for the applicable classification in cash or in kind.

(iii) *Apprenticeship ratio.* The allowance for payment of wages to apprentices at rates less than the applicable prevailing wage rates determined by the U.S. Department of Labor is subject to any applicable ratio of apprentices to journeyworkers required under the registered apprenticeship program and consistent with section 45(b)(8)(B) and § 1.45–8. Any apprentice performing construction, alteration, or repair work on the job site in excess of the ratio permitted under the registered program or the ratio applicable to the geographic area of the facility pursuant to 29 CFR 5.5(a)(4)(i) must be paid not less than the applicable wage rate on the wage determination for the work actually performed to satisfy the Prevailing Wage Requirements. Taxpayers, contractors, or subcontractors have the discretion to determine which apprentice(s) must receive the full prevailing wage rate for hours worked if the applicable ratio of apprentices to journeyworkers has not been met.

(iv) *Reciprocity of ratios and wage rates.* If a taxpayer, contractor, or subcontractor is performing construction, alteration, or repair work on a facility in a geographic area other than the geographic area in which an apprenticeship program is registered, the taxpayer, contractor, or subcontractor must comply with the apprentice-to-journeyworker ratios

applicable within the geographic area in which the construction, alteration, or repair work is being performed. If there is no applicable ratio for the geographic area of the facility, the ratio specified in the registered apprenticeship program standard must be observed. The wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the geographic area in which the construction, alteration, or repair work is being performed must be observed.

(c) *Curing a failure to satisfy the prevailing wage requirements*—(1) *In general*. If a taxpayer fails to ensure that all laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a qualified facility are paid wages at rates not less than those set forth in the applicable wage determination(s), such taxpayer will be deemed to have satisfied the Prevailing Wage Requirements with respect to such facility for any year if the taxpayer makes the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section.

(i) *Correction payment*. The taxpayer must pay any laborer or mechanic who was paid wages at a rate below the rate described in paragraph (b) of this section for any pay period during such year an amount equal to the sum of:

(A) The difference between the amount of wages paid to such laborer or mechanic for all hours worked during such period and the amount of wages required to be paid to such laborer or mechanic pursuant to paragraph (a) of this section for all hours worked during such period; and

(B) Interest on the amount determined under paragraph (c)(1)(i)(A) of this section at the Federal short-term rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2).

(ii) *Penalty payment*. The taxpayer must pay a penalty equal to \$5,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the rate described in paragraph (b) of this section for any period during such year.

(iii) *Correction and penalty payments not required if taxpayer ineligible for increased credit amount under section 45(b)(6)(B)(iii)*. If the taxpayer claims the increased credit amount under section 45(b)(6)(B)(iii) and does not satisfy the Prevailing Wage Requirements for the claimed increased credit amount, then the obligation to make correction and penalty payments under paragraphs (c)(1)(i) and (ii) of this section applies in order for the taxpayer to retain the

credit. If the IRS determines that a taxpayer claiming the increased credit amount under section 45(b)(6)(B)(iii) failed to meet the Prevailing Wage Requirements and the taxpayer does not make the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section, then no penalty is assessed under paragraph (c)(1)(ii) of this section, and the taxpayer is not eligible for the increased credit amount under section 45(b)(6)(B)(iii). Taxpayers that are not eligible to claim the increased credit amount may still be eligible to claim the base amount of the renewable electricity production credit under section 45(a) if they meet the requirements to claim the credit.

(iv) *Correction and penalty payments in the event of a transfer pursuant to section 6418*. To the extent an eligible taxpayer, as defined in section 6418(f)(2), has determined an increased credit amount under section 45(b)(6) and transferred such increased credit amount as part of a specified credit portion, the obligation to make correction and penalty payments under paragraphs (c)(1)(i) and (ii) of this section remains with the eligible taxpayer. The obligation for an eligible taxpayer to satisfy the Prevailing Wage Requirements becomes binding upon the earlier of the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. If the IRS determines that the eligible taxpayer failed to meet the Prevailing Wage Requirements and the eligible taxpayer does not then make the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section, then no penalty is assessed under paragraph (c)(1)(ii) of this section, and the eligible taxpayer is not eligible for the increased credit amount determined under section 45(b)(6)(B)(iii). Section 6418 and the regulations under section 6418 control for determining the impact of an eligible taxpayer's failure to cure on any transferee taxpayer. The eligible taxpayer that is not eligible to claim the increased credit amount may still be eligible to claim the base amount of the renewable electricity production credit under section 45(a) if they meet the requirements to claim the credit.

(v) *Special rule for laborers and mechanics who cannot be located*. A taxpayer will be deemed to have paid a correction payment, under this paragraph (c)(1), to a laborer or mechanic who cannot be located if the

taxpayer can establish that correction payments have been made. A taxpayer may establish that correction payments have been made by demonstrating compliance with the applicable State unclaimed property law and all Federal and State withholding and information reporting requirements with respect to the payments.

(vi) *Examples*. The provisions of this paragraph (c)(1) are illustrated by the following examples, which do not take into account any possible application of the enhanced correction and penalty payment requirements in the case of intentional disregard under paragraph (c)(3) of this section, the exception for wages paid before a determination by the U.S. Department of Labor under paragraph (c)(5) of this section, or the penalty waiver under paragraph (c)(6) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(A) *Example 1*. Taxpayer A starts construction of a qualified facility on February 3, 2023. The facility is placed in service on October 10, 2023, and Taxpayer A claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2023 tax return. Laborer X was employed in the construction, alteration, or repair of the facility in calendar year 2023 for 20 weeks and was paid on a weekly basis. Laborer X was paid wages below the prevailing wage rate for all pay periods in calendar year 2023. All other laborers and mechanics were paid wages at the prevailing wage rate. The aggregate difference between the amount of wages Laborer X was paid and the amount required to be paid under paragraph (a) of this section is \$400 (that is, Laborer X worked 20 weeks during the year and was underpaid by \$20 in each of those weeks). The amount of the correction payment Taxpayer A must make to Laborer X is equal to \$400 plus interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2). The total number of laborers underpaid for any period in 2023 was one, so the total amount of the penalty payment that Taxpayer A must pay to the IRS to retain the increased credit amount is \$5,000.

(B) *Example 2*. Taxpayer B starts construction of a qualified facility on January 30, 2023. The facility is placed in service on February 2, 2024. Taxpayer B claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2024 tax return. Taxpayer B paid workers on a biweekly basis. Five laborers employed in the construction of the facility were paid wages at rates

below the prevailing wage rates in 2023, with the difference between the amount they were paid and the amount of wages required to be paid under paragraph (a) of this section being \$500 per laborer.

One of those laborers remained employed in the construction of the facility in 2024 and was paid wages below the prevailing wage rate in 2024, with the difference between the amount the laborer was paid and the amount of wages required to be paid under paragraph (a) of this section being \$100. All other laborers and mechanics involved in the construction, alteration, or repair of the facility were paid wages at the prevailing wage rates. Taxpayer B must make correction payments of \$500 plus interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2) to each of the five laborers that were underpaid in 2023, and a correction payment of \$100 plus interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2) to the laborer that was underpaid in 2024. The total amount of the penalty payment that Taxpayer B must pay to the IRS to retain the increased credit amount is \$30,000, which includes \$5,000 for each laborer underpaid in 2023 and \$5,000 for the laborer underpaid in 2024.

(C) *Example 3.* Taxpayer C starts construction of a qualified facility on January 30, 2023. The facility is placed in service on February 2, 2024. Taxpayer C claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2024 tax return. Taxpayer C paid workers on a biweekly basis. Laborer Y was employed in the construction of the facility for 22 weeks in 2023 was paid wages at rates below the prevailing wage rates for the first 20 weeks of her employment in the amount of \$500 (that is, Laborer Y was underpaid \$50 in each of the 10 biweekly periods). For the last biweekly pay period, Taxpayer C paid Laborer Y the correct prevailing rate for the work performed during the period, plus \$500 for the amounts that were underpaid in the first 10 periods. All other laborers and mechanics involved in the construction, alteration, or repair of the facility were paid at the prevailing wage rates. Taxpayer C is required to make a correction payment to Laborer Y in the amount of the interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2) to the

laborer that was underpaid in 2023. To retain the increased credit amount, Taxpayer C must make a penalty payment of \$5,000 to the IRS with respect to Laborer Y.

(2) *Deficiency procedures not to apply.* The penalty payment required by paragraph (c)(1)(ii) of this section may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code. Any determination by the IRS disallowing a claim for the increased credit amount under section 45(b)(6) will be subject to the deficiency procedures of subchapter B of chapter 63.

(3) *Intentional disregard*—(i) *Application of section 45 (b)(7)(B)(iii).* If the IRS determines that any failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section is due to intentional disregard of the requirement—

(A) The correction payment under paragraph (c)(1)(i) of this section is increased to three times the sum determined in paragraph (c)(1)(i) of this section; and

(B) The penalty payment under paragraph (c)(1)(ii) of this section is increased to \$10,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the rate described in paragraph (b) of this section for any period during such year.

(ii) *Meaning of intentional disregard.* A failure to ensure that any laborer or mechanic employed in the construction, alteration, or repair of a qualified facility is paid wages at the prevailing wage rate is due to intentional disregard if it is knowing or willful.

(iii) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure to satisfy the Prevailing Wage Requirements is due to intentional disregard include, but are not limited to—

(A) Whether the failure was part of a pattern of conduct that includes repeated or systemic failures to ensure that the laborers and mechanics were paid wages at rates not less than the applicable prevailing wage rate, including failures to pay prevailing wages as required under other applicable laws;

(B) Whether the taxpayer took steps to determine or review the applicable classifications of laborers and mechanics, such as through a quarterly, or more frequent, review of the applicable classifications of laborers and mechanics according to the actual duties performed by those laborers and mechanics;

(C) Whether the taxpayer took steps to determine or review the applicable prevailing wage rate(s) for laborers and mechanics to ensure usage of correct rates by all contractors and subcontractors, such as through a quarterly, or more frequent, review of the prevailing wage rates;

(D) Whether the taxpayer promptly cured any failures to ensure that laborers and mechanics were paid wages at rates not less than the applicable prevailing rates;

(E) Whether the taxpayer has been required to make a penalty payment under paragraph (c)(1)(ii) of this section in previous years;

(F) Whether the taxpayer undertook (or engaged an independent third party to aid in conducting) a quarterly, or more frequent, review of wages paid to mechanics and laborers to ensure that wages at rates not less than the applicable prevailing wage rates were paid (including by reviewing payroll information of contractors and subcontractors or by requiring contractors and subcontractors to regularly provide payroll information to the taxpayer or a third party acting on behalf of the taxpayer);

(G) Whether the taxpayer included provisions in any contracts entered into with contractors that required the contractors and any subcontractors retained by the contractors to pay laborers and mechanics wages at rates not less than the prevailing wage rates and maintain records to ensure the taxpayer's compliance with recordkeeping requirements set forth in § 1.45–12;

(H) Whether the taxpayer posted in a prominent place at the qualified facility or otherwise provided written notice to laborers and mechanics during the construction, alteration, or repair of the qualified facility, the applicable wage rate(s) as determined by the U.S. Department of Labor for all classifications of work to be performed for the construction, alteration, or repair of the facility, that in order to be eligible to claim certain tax benefits, employers must ensure that laborers and mechanics are paid wages at rates not less than such wage rates, and instructions on how laborers and mechanics may contact the taxpayers' personnel departments or taxpayers' managers to report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with applicable wage determinations, employment tax violations, or violations of workplace standard laws without retaliation or adverse action;

(I) Whether laborers and mechanics were given the opportunity to acknowledge notice provided by the taxpayer, contractor, or subcontractor that in order to be eligible to claim certain tax benefits, taxpayers must ensure that laborers and mechanics employed by the taxpayer, contractor, or subcontractor in the construction of a qualified facility are paid wages at rates not less than prevailing wage rates;

(J) Whether the taxpayer had in place procedures whereby laborers and mechanics could report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with the wage determination of workers, employment tax violations, or violations of workplace standard laws to appropriate personnel departments or managers without retaliation or adverse action, and whether taxpayer investigated such reports by laborers and mechanics and had internal controls to prevent failures to pay prevailing wages and classify workers in accordance with the wage determination of workers, employment tax violations, and violations of workplace standard laws;

(K) Whether all laborers and mechanics were provided with a written notice of the rights conferred by the whistleblower provisions of the Taxpayer First Act in section 7623(d);

(L) Whether all laborers and mechanics were provided with paystubs (or access to individual payroll records) reflecting the amount they were paid per pay period (including the specific hourly rate and all deductions from wages);

(M) Whether the taxpayer investigated any complaints of retaliation or adverse action resulting from, reports of suspected failures to pay prevailing wages and/or classify workers in accordance with applicable wage determinations, employment tax violations, or violations of workplace standard laws and took appropriate actions to remedy any retaliation or adverse action and prevent it from reoccurring;

(N) Whether the taxpayer, contractor, or subcontractor contracted with contractors who, at the time the work was performed, was known by the taxpayer, contractor, or subcontractor to be debarred by a municipality, State, or the U.S. Department of Labor for violations related to the underpayment of local, State, or Federal prevailing wages; and

(O) Whether the taxpayer failed to maintain and preserve records in accordance with § 1.45–12 sufficient to establish compliance with the

prevailing wage requirements for relevant tax years.

(iv) *Examples.* The provisions of this paragraph (c)(3) are illustrated by the following examples, which take into account certain facts and circumstances described in paragraph (c)(3)(iii) of this section, that are considered in applying the enhanced correction and penalty payment requirements in the case of intentional disregard. These examples do not take into account any possible application of the exception for wages paid before a determination by the U.S. Department of Labor under paragraph (c)(5) of this section, or the penalty waiver under paragraph (c)(6) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(A) *Example 1.* Taxpayer D failed to satisfy the Prevailing Wage Requirements with respect to the construction of a qualified facility. Taxpayer D did not include contract language that requires the payment of prevailing wages in the contract executed with the contractor nor did it require similar contract provisions in any subcontracts. Taxpayer D did not post in a prominent place at the qualified facility or otherwise notify any laborers or mechanics that in order to claim certain tax benefits (the increased credit amount described in section 45(b)(6)(B)(iii)) taxpayers must ensure that laborers and mechanics are paid wages at rates not less than prevailing wage rates for construction of the qualified facility. Taxpayer D did not have a process for laborers and mechanics to report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with applicable wage determinations. Additionally, Taxpayer D did not have a procedure for the review of wages paid to laborers and mechanics to ensure that wages at rates not less than the applicable prevailing wage rate were paid, nor did Taxpayer D undertake any actual review of the wages paid to any laborers or and mechanics employed in the construction of the qualified facility. Taxpayer D failed to maintain any records documenting wages paid to laborers and mechanics in connection with the construction of the facility. Considering all of the facts and circumstances, Taxpayer D's failure to satisfy the Prevailing Wage Requirements would be considered due to intentional disregard for purposes of this paragraph (c)(3) and Taxpayer D would be subject to the enhanced correction and penalty payments described in paragraph (c)(3)(i) of this section.

(B) *Example 2.* Taxpayer E failed to satisfy the Prevailing Wage Requirements with respect to the construction of a qualified facility. Taxpayer E included contract language that requires the payment of prevailing wages in the contract executed with the contractor and required similar language be included in all subcontracts. Taxpayer E posted in a prominent place at the qualified facility that in order to claim tax benefits (that is, the increased credit amount described in section 45(b)(6)(B)(iii)) employers must ensure that laborers and mechanics are paid wages at rates not less than prevailing wage rates for the construction of the qualified facility. Additionally, Taxpayer E created procedures for a quarterly review of the applicable classifications of laborers and mechanics according to the actual duties performed by those laborers and mechanics and the actual wages paid to laborers and mechanics. In cases in which reviews found any instance that a laborer or mechanic was paid wages at rates less than the applicable prevailing wage rates, Taxpayer E promptly cured the failure. Considering all of the facts and circumstances, Taxpayer E's failure to satisfy the Prevailing Wage Requirements would not be considered due to intentional disregard for purposes of this paragraph (c)(3) and Taxpayer E would not be subject to the enhanced correction and penalty payments described in paragraph (c)(3)(i) of this section. Taxpayer E would be subject to the normal correction and penalty payments described in paragraph (c)(1)(i) of this section.

(v) *Rebuttable presumption of no intentional disregard.* If a taxpayer makes the correction and penalty payments required by paragraphs (c)(1)(i) and (ii) of this section before receiving notice of an examination from the IRS with respect to a claim for the increased credit amount under section 45(b)(6), the taxpayer will be presumed not to have intentionally disregarded the Prevailing Wage Requirements in paragraph (a) of this section. The IRS may rebut this presumption based on the relevant facts and circumstances.

(4) *Limitation on the availability of cure—(i) 180-day limit.* In the case of a final determination by the IRS with respect to any failure by the taxpayer to satisfy the Prevailing Wage Requirements in paragraph (a) of this section, the cure provision in paragraph (c)(1) of this section does not apply unless the correction and penalty payments described in paragraphs (c)(1)(i) and (ii) of this section are made by the taxpayer on or before the date

that is 180 days after the date of such determination.

(ii) *Final determination.* For purposes of paragraph (c)(4)(i) of this section, a final determination occurs on the date the IRS sends to the taxpayer a notice stating that the taxpayer has failed to satisfy the Prevailing Wage Requirements under paragraph (a) of this section.

(5) *Exception for wages paid before a supplemental wage determination or additional classification and wage rate is issued by the U.S. Department of Labor Wage and Hour Division.* If a taxpayer has requested a supplemental wage determination or an additional classification and wage rate from the Wage and Hour Division in accordance with paragraph (b)(3)(ii) of this section and the Wage and Hour Division makes a wage determination or issues an additional classification and wage rate determination after the construction, alteration, or repair of a qualified facility has started, the taxpayer will not be considered to have failed to meet the Prevailing Wage Requirements under paragraph (a) of this section with respect to wages paid to any mechanic or laborer whose wage rate was subject to the request and who was paid below the prevailing wage rate before the determination by the Wage and Hour Division if the taxpayer makes a payment within 30 days of the determination to each laborer or mechanic equal to the difference between the amount of wages paid to such laborer or mechanic before the determination and the amount of wages required to be paid to such laborer or mechanic pursuant to paragraph (a) of this section during such period.

(6) *Waiver of the penalty—(i) Availability of waiver.* The penalty payment required by paragraph (c)(1)(ii) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section is waived with respect to a laborer or mechanic employed in the construction, alteration, or repair of a qualified facility during a calendar year if the taxpayer makes the correction payment required by paragraph (c)(1)(i) of this section by the last day of the first month that follows the end of the calendar quarter in which the failure occurred, and:

(A) The laborer or mechanic is paid wages at rates less than the amount required to be paid under paragraph (b) of this section for not more than 10 percent of all pay periods of the calendar year (or part thereof) during which the laborer or mechanic was employed in the construction,

alteration, or repair of the qualified facility; or

(B) The difference between the amount the laborer or mechanic was paid during the calendar year (or part thereof) and the amount required to be paid under paragraph (b) of this section is not greater than 5 percent of the amount required to be paid under paragraph (b) of this section.

(ii) *Project labor agreements.* The penalty payments required by paragraphs (c)(1)(ii) and (c)(3)(i)(B) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section do not apply with respect to a laborer or mechanic employed in the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project (Qualifying Project Labor Agreement) and any correction payment owed to any laborer or mechanic is paid on or before the date on which the increased credit amount is claimed under section 45(b)(6). In order to be considered a Qualifying Project Labor Agreement, such agreement must at a minimum:

(A) Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(B) Contain guarantees against strikes, lockouts, and similar job disruptions;

(C) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(D) Contain provisions to pay wages at rates not less than the prevailing rates in accordance with subchapter IV of chapter 31 of title 40 of the United States Code;

(E) Contain provisions for referring and using qualified apprentices consistent with section 45(b)(8)(A) through (C) and guidance issued thereunder; and

(F) Be a collective bargaining agreement with one or more labor organizations (as defined in 29 U.S.C. 152(5)) of which building and construction employees are members, as described in 29 U.S.C. 158(f).

(iii) *Transition Waiver.* The penalty payment required by paragraph (c)(1)(ii) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section is waived with respect to a laborer or mechanic who performed work in the construction, alteration, or repair of a

qualified facility on or after January 29, 2023, and prior to June 25, 2024, if the taxpayer relied upon Notice 2022–61, 2022–52 I.R.B. 560, or the Proposed Regulations (REG–100908–23) (88 FR 60018), corrected in 88 FR 73807 (Oct. 27, 2023), corrected in 89 FR 25550 (April 11, 2024), to determine when the activities of any laborer or mechanic became subject to the Prevailing Wage Requirements, and the taxpayer makes the correction payments required by paragraph (c)(1)(i) of this section with respect to such laborer and mechanics within 180 days of June 25, 2024.

(iv) *Examples.* The provisions of this paragraph (c)(6) are illustrated by the following examples, which do not take into account any possible application of the enhanced correction and penalty payment requirements in the case of intentional disregard under paragraph (c)(3) of this section or the exception for wages paid before a determination by the U.S. Department of Labor under paragraph (c)(5) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(A) *Example 1.* Taxpayer F starts construction of a qualified facility on February 1, 2023. The facility is placed in service on October 10, 2023, and Taxpayer F claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2023 tax return filed on April 15, 2024. Taxpayer F employs Laborer Z in the construction of the facility for a total of 36 weekly pay periods. Taxpayer F pays Laborer Z wages at the prevailing wage rate for all pay periods except for the pay periods ending on April 8, April 22, and May 20. Under the applicable prevailing wage rate, Laborer Z should have been paid a total of \$35,000 in 2023, but was instead paid only \$30,000. Taxpayer F ensures that all other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid wages at the prevailing wage rate. Taxpayer F becomes aware of the failure on June 1, 2023. On June 19, 2023, Taxpayer F pays Laborer Z the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver applies to Taxpayer F. Although the difference between the amount Laborer Z was paid in 2023 and the amount required to be paid under the applicable prevailing wage rate was greater than five percent ($\$5,000/\$35,000 = 14.29\%$), Laborer Z was paid below the prevailing wage rate for only three out of 36 pay periods, or 8.3% of the applicable pay periods. Furthermore, Taxpayer F made the correction payment before the last day of the first month that follows the end

of the calendar quarter in which the failure occurred.

(B) *Example 2.* Taxpayer G starts construction of a qualified facility on February 1, 2024. The facility is placed in service on October 10, 2024, and Taxpayer G claims the increased credit under section 45(b)(6)(B)(iii) on its 2024 tax return filed on April 15, 2025. Taxpayer G hires Contractor M to assist in the construction, and Contractor M employs Laborer Y in the construction of the facility for a total of 36 pay periods. Contractor M pays Laborer Y wages at the prevailing wage rate for all pay periods except for the pay periods ending on February 24 and March 2 of 2024. Under the applicable prevailing wage rate, Laborer Y should have been paid a total of \$50,000 in 2024, but was instead paid only \$49,000. All other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid wages at the prevailing wage rate. Taxpayer G learns on January 1, 2025, that Laborer Y was paid wages at rates that were less than the prevailing wage rates, and on January 19, 2025, Taxpayer G pays Laborer Y the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver does not apply to Taxpayer G. Laborer Y was paid wages at rates below the prevailing wage rate for two out of 36 pay periods, or 5.5% of the applicable pay periods, and the difference between the amount Laborer Y was paid in 2024 and the amount required to be paid under the applicable prevailing wage rate was \$1,000, which is only 2% of the amount required to be paid under the applicable prevailing wage rate. However, because Taxpayer G did not make the correction payments until January 19, 2025, which was later than the last day of the first month that followed the end of the calendar quarter in which the failure occurred, Taxpayer G does not qualify for the penalty waiver. Taxpayer G must pay a penalty of \$5,000 with respect to the failure.

(C) *Example 3.* Taxpayer H starts the construction of a qualified facility on April 8, 2024. The facility is placed in service on December 1, 2024, and Taxpayer H claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2024 tax return filed on April 15, 2025. Taxpayer H employs Laborer X in the construction of the facility for a total of 34 pay periods. Due to a failure to classify workers in accordance with the wage determination, Taxpayer H pays Laborer X wages at rates below the prevailing wage rates for the first 12 pay periods. Under the applicable prevailing wage rate, Laborer X should have been paid \$20,000 during those 12 pay periods, but was instead paid only

\$17,000. All other laborers and mechanics employed in the construction, alteration, or repair of the facility were paid wages at the prevailing wage rates. Taxpayer H becomes aware of the failure on July 15, 2024, and on July 30, 2024, Taxpayer H pays Laborer X the correction payments required by paragraph (c)(1)(i) of this section. For the 22 pay periods from July 1, 2024, through December 1, 2024, Taxpayer H pays Laborer X the correct prevailing wage rate in amounts that total \$41,000. The penalty waiver applies to Taxpayer H. Taxpayer H made the correction payment on July 30, 2024, which was before the last day of the first month that followed the end of the quarter in which the failures occurred. Although Laborer X was paid wages at a rate below the prevailing wage rate for 35% (12 pay periods with underpayments/34 total pay periods) of the applicable pay periods, the difference between the total amount Laborer X was paid in 2024 and the amount required to be paid under the applicable prevailing wage rate was \$3,000, which is only 4.9% of the total amount required to be paid to Laborer X under the applicable prevailing wage rate (\$3,000/\$61,000).

(D) *Example 4.* Taxpayer I begins construction of a qualified facility on August 29, 2024. The facility is placed in service on June 30, 2025, and Taxpayer I claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2025 tax return. Taxpayer I employs Laborer W in the construction of the facility for a total of 25 weekly pay periods in 2025. Taxpayer I pays Laborer W wages at or above the prevailing wage rate for all pay periods except for the pay periods ending on April 12, May 10, and June 14. Under the applicable prevailing wage rate, Laborer W should have been paid \$25,000 in 2025, but was instead paid only \$20,000. Taxpayer I ensures that all other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid at the prevailing wage rate. Taxpayer I has in place a pre-hire collective bargaining agreement, but the agreement does not contain a provision for referring and using qualified apprentices. Taxpayer I becomes aware of the failure to pay Laborer W at the prevailing wage rate on June 30, 2025, and on July 4, 2025, Taxpayer I pays Laborer W the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver does not apply to Taxpayer I. The difference between the amount Laborer W was paid in 2025 and the amount required to be paid under

the applicable prevailing wage rate was \$5,000, which is 20% of the amount required to be paid under the applicable prevailing wage rate. Laborer W was paid below the prevailing wage rate for three out of 25 pay periods, or 12% of the applicable pay periods. Taxpayer I does not have in place a Qualifying Project Labor Agreement because the pre-hire collective bargaining agreement does not contain a provision for referring and using qualified apprentices as required by paragraph (c)(6)(ii)(E) of this section.

(E) *Example 5.* Taxpayer J intends to construct a qualified facility and claim the increased credit amount under section 45(b)(6)(B)(iii). Taxpayer J executes a contract for the construction of the facility and engages in construction activities as defined in paragraph (d)(3) of this section starting August 1, 2023. Taxpayer J began construction as of September 1, 2023, pursuant to the Physical Work Test in Notice 2022–61. During the period of August 1 to September 1 of 2023, Taxpayer J paid all laborers and mechanics wages at rates below the applicable prevailing wage rates in reliance on Notice 2022–61 regarding when construction began for purposes of satisfying the requirements of section 45(b)(7). After September 1, 2023, Taxpayer J paid all laborers and mechanics wages at the prevailing wage rate for the appropriate classification for work performed on the facility. Within 180 days of June 25, 2024, Taxpayer J makes correction payments to all affected laborers and mechanics for the period of August 1, 2023, to September 1, 2023, equal to the amount described in paragraph (c)(1)(i) of this section. Pursuant to paragraph (c)(6)(iii) of this section, the penalty under paragraph (c)(1)(ii) of this section is waived.

(d) *Definitions.* Solely for purposes of this section, the following definitions apply:

(1) *Apprentice.* The term *apprentice* has the same meaning as *qualified apprentice* in § 1.45–8(g)(8).

(2) *Bona fide fringe benefits.* The term *bona fide fringe benefits* means fringe benefits described in 29 CFR part 5. Bona fide fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits (each as described in 29 CFR

part 5 and other U.S. Department of Labor guidance). Consistent with 29 CFR 5.29, bona fide fringe benefits do not include benefits required by other Federal, State, or local law.

(3) *Construction, alteration, or repair.* The term *construction, alteration, or repair* generally means those activities, described in 29 CFR 5.2 as being construction, prosecution, completion, or repair that are performed with respect to a qualified facility as defined under section 45. Construction, alteration, or repair does not include any activities that are excluded from the requirement to pay prevailing wages under the definitions described in 29 CFR 5.2. Repair work normally includes an activity that improves the facility, either by fixing something that is not functioning properly or by improving upon the facility's existing condition; involves the correction of individual problems or defects as separate and segregable incidents and is not continuous or recurring; or improves the facility's structural strength, stability, safety, capacity, efficiency, or usefulness. Construction, alteration, or repair does not include work that is ordinary and regular in nature that is designed to maintain and preserve existing functionalities of a facility after it is placed in service. Work designed to maintain and preserve functionality of a facility after it is placed in service includes basic maintenance such as regular inspections of the facility, regular cleaning and janitorial work, regular replacement of materials with limited lifespans such as filters and light bulbs, and the regular calibration of equipment. However, such work that occurs before the facility is placed in service may constitute construction for which prevailing wages must be paid in order to claim the increased credit amount. Maintenance generally includes work that is needed to keep the facility in its current condition so that it may continue to be used and work that does not improve the current condition or function of a facility. Maintenance is routinely scheduled and continuous or recurring. Ultimately, the determination of whether an activity can be categorized as construction, alteration, or repair is dependent on the facts and circumstances. This definition has no bearing on any other sections of the Code, including any determination of construction, alteration, repair, or maintenance under sections 162 or 263 of the Code, unless specified otherwise in the Code or in this chapter.

(4) *Contractor.* The term *contractor* means any person that enters into a contract directly with the taxpayer (or the taxpayer's designee, assignee, or

agent) for the construction, alteration, or repair of a qualified facility.

(5) *Employed.* The term *employed* means performing the duties of a laborer or mechanic for the taxpayer, contractor, or subcontractor (as applicable), regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.

(6) *General wage determination.* The term *general wage determination* means a wage determination issued by the U.S. Department of Labor and published on the approved website. A general wage determination provides the minimum hourly wage rates (both the basic hourly rate of pay and bona fide fringe benefit rates) that the U.S. Department of Labor has determined are prevailing for laborers and mechanics in specified types of construction in a given geographic area.

(7) *Geographic area and locality.* The terms *geographic area* and *locality* mean the county, independent city, or other civil subdivision of the State in which a qualified facility is located. The terms *geographic area* and *locality* also include areas located offshore of the United States and within the outer continental shelf of the United States and the U.S. territories. If construction, alteration, or repair work is performed in multiple counties, independent cities, or other civil subdivisions, the geographic area may include all counties, independent cities, or other civil subdivisions in which the work will be performed. The locality in which a facility is located is defined as the physical place or places where the facility will be placed in service and remain. The locality of the facility also includes secondary locations where a significant portion of the facility is constructed, altered, or repaired provided that such construction is for specific use at that facility and does not simply reflect the manufacture or construction of a product made available to the general public, and provided further that the site is either established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the facility. A significant portion means one or more entire portion(s) or module(s) of the facility, such as a completed room or structure, with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the place where the facility will be placed in service and remain. A significant portion does not include materials or prefabricated component parts delivered to the location of a facility. A specific period of time means

a period of weeks, months, or more, and does not include circumstances in which a site at which multiple facilities are in progress is shifted exclusively to a single facility for a few hours or days in order to meet a deadline. The locality of the facility also includes any adjacent or virtually adjacent dedicated support sites, including job headquarters, tool yards, batch plants, borrow pits, and similar facilities of a taxpayer, contractor, or subcontractor that are established specifically for or dedicated exclusively to the construction, alteration, or repair of the facility, and adjacent or virtually adjacent to either a primary construction site or a secondary construction site.

(8) *Laborer and mechanic*—(i) *In general.* The terms *laborer* and *mechanic* mean those individuals whose duties are manual or physical in nature (including those individuals who use tools or who are performing the work of a trade). The terms *laborer* and *mechanic* include apprentices and helpers. The terms do not apply to individuals whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics. Working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties, and who do not meet the criteria for exemption of 29 CFR part 541, are considered laborers and mechanics for the time spent conducting laborer and mechanic duties.

(ii) *Examples*—(A) *Individual working in professional capacity.* Taxpayer hires an architect (Architect) to design a qualified facility and general layout of the site including access roads and ancillary buildings to support the facility. Taxpayer engages a general contractor (Contractor) to construct the qualified facility based on the drafting plans of Architect. Contractor hires an electrical engineer (Engineer) to assist Architect and Contractor with design and placement of the electrical systems necessary to support the qualified facility. Engineer oversees and inspects construction of the electrical systems to ensure the systems conform to the facility's specifications and Architect's drafting plans. Architect and Engineer do not perform any actual duties of a laborer or mechanic during their employment with Taxpayer and Contractor. Architect and Engineer are working in a professional capacity as defined under 29 CFR part 541 and are exempt employees under the DBA. Architect and Engineer are not

considered laborers and mechanics for the duration of their employment for purposes of this section and Taxpayer does not need to ensure they are paid wages at rates not less than the prevailing wage rates for purposes of claiming the increased credit amount under section 45(b)(6)(B)(iii).

(B) *Working foreperson.* A supervisory employee who is a working foreperson (Foreperson) spends 60% of the time during the workweek (24 hours of a 40 hour workweek) performing administrative functions such as preparing timecards, supervising work on the qualified facility and arranging for deliveries. Foreperson spends the remaining 40% (16 hours) of the time performing the duties of an electrician with respect to construction of a qualified facility. Because Foreperson devoted more than 20% of their time during the workweek to laborer or mechanic duties, Foreperson must be paid wages at rates not less than the electrician's applicable prevailing wage rate for the 16 hours spent doing the duties of an electrician for purposes of the Prevailing Wage Requirements.

(9) *Subcontractor.* The term *subcontractor* means any person that enters into a contract with a contractor for the construction, alteration, or repair of a qualified facility. The term *subcontractor* also includes any person that agrees to perform or be responsible for the performance of any part of a contract entered into between the taxpayer (or the taxpayer's designee, assignee, or agent) and a contractor (or between a contractor and another subcontractor) with respect to the construction, alteration, or repair of a qualified facility.

(10) *Taxpayer.* The term *taxpayer* means any taxpayer as defined in section 7701(a)(14), including applicable entities described in section 6417(d)(1)(A). In the case of a credit transferred under section 6418, the term *taxpayer* means the eligible taxpayer that determines the eligible credit to be transferred and makes a transfer election under section 6418 to transfer any specified credit portion (including 100 percent) of an eligible credit determined with respect to any eligible credit property of such eligible taxpayer for any taxable year.

(11) *Type of construction.* The type of construction is the general category of construction as established by the U.S. Department of Labor for the publication of general wage determinations as defined in 29 CFR 1.2.

(12) *Wages.* The term *wages* generally means wages as defined in 29 CFR 5.2. In general, wages means the basic hourly rate of pay; any contribution

irrevocably made by a taxpayer, contractor, or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the taxpayer, contractor, or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, provided the commitment was communicated in writing to the laborers and mechanics affected. Whether amounts are wages for prevailing wage purposes is not relevant in determining whether amounts are wages or compensation for other Federal tax purposes.

(e) *Applicability date.* This section applies to qualified facilities placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified facilities placed in service in taxable years ending on or before June 25, 2024, and qualified facilities placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

§ 1.45–8 Apprenticeship requirements.

(a) *Apprenticeship requirements*—(1) *In general.* Except as provided in paragraphs (a)(2) and (f) of this section, a taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6)(B)(iii) with respect to any qualified facility must satisfy the requirements of section 45(b)(8) and this section with respect to the construction of such facility (Apprenticeship Requirements). The taxpayer is solely responsible for ensuring that the Apprenticeship Requirements are satisfied. See paragraph (g) of this section for definitions of terms used in this section.

(2) *Transition relief.* Taxpayers are excepted from the Apprenticeship Requirements with respect to any activities that would be considered construction, alteration, or repair of the qualified facility and that occurred prior to January 29, 2023.

(b) *Labor hours requirement*—(1) *Percentage of total labor hours.* A taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6) must ensure that qualified apprentices (hired by the taxpayer, contractor, or subcontractor) perform not less than the applicable percentage of the total labor hours of the construction, alteration, or

repair work (including work performed by any contractor or subcontractor) with respect to any qualified facility prior to the facility being placed in service, subject to the apprentice-to-journeyworker ratio described in paragraph (c) of this section. The percentage of total labor hours is calculated on a per qualified facility basis, aggregating all hours worked by all laborers and mechanics (including the hours of qualified apprentices) during construction of the facility and dividing the total hours work by all laborers and mechanics by the hours of the qualified apprentices.

(2) *Applicable percentage.* For purposes of paragraph (b)(1) of this section, and subject to paragraph (b)(3) of this section, the applicable percentage is—

(i) 10 percent in the case of a qualified facility, the construction of which begins before January 1, 2023;

(ii) 12.5 percent in the case of a qualified facility, the construction of which begins after December 31, 2022, and before January 1, 2024; and

(iii) 15 percent in the case of a qualified facility, the construction of which begins after December 31, 2023.

(3) *Transition rule.* Taxpayers may apply the rules set forth in Notice 2022–61, 2022–52 I.R.B. 560, or these regulations for determining when construction began for purposes of the applicable percentage of labor hours performed by qualified apprentices required under section 45(b)(8)(A) and paragraph (b)(2) of this section.

(c) *Ratio requirement*—(1) *In general.* The labor hours requirement under paragraph (b) of this section is subject to any applicable requirements for apprentice-to-journeyworker ratios of the U.S. Department of Labor or the applicable State apprenticeship agency.

(2) *Ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any occupation and its corresponding classification on any day must comply with the applicable apprentice-to-journeyworker ratio of the registered apprenticeship program in accordance with 29 CFR part 29. If a taxpayer, contractor, or subcontractor is performing construction, alteration, or repair work on a qualified facility in a geographic area other than the geographic area in which an apprenticeship program is registered, the taxpayer, contractor, or subcontractor must comply with the apprentice-to-journeyworker ratios applicable within the geographic area in which the construction, alteration, or repair work is being performed. If there is no applicable ratio for the geographic area of the qualified facility, the ratio

specified in the registered apprenticeship program standard must be observed.

(3) *Failure to meet ratio requirements.* For purposes of section 45(b)(8)(B) and paragraph (b) of this section, if on any day the ratio of apprentices to journeyworkers exceeds the ratio established in accordance with paragraph (c)(2) of this section, subject to the requirements of the registered apprenticeship program, the labor hours performed by any qualified apprentice in excess of the ratio may not be counted as hours performed by qualified apprentices for purposes of the labor hours requirement. The hours devoted to the performance of construction, alteration, or repair work by any qualified apprentice in excess of the ratio will be counted towards the total labor hours, but will not be counted as hours performed by qualified apprentices for purposes of the labor hours requirement under paragraph (b) of this section.

(d) *Participation requirement.* Each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform work with respect to the construction, alteration, or repair of the qualified facility prior to the facility being placed in service. The participation requirement applies if a taxpayer, contractor, or subcontractor employs four or more individuals in the construction of the qualified facility over the entire course of the construction, regardless of whether they are employed at the same location or at the same time.

(e) *Examples.* The provisions of paragraphs (b) through (d) of this section are illustrated by the following examples. For purposes of the following examples, assume that each taxpayer has a calendar year taxable year.

(i) *Example 1.* Taxpayer A starts construction of a qualified facility on April 1, 2023. Accordingly, Taxpayer A must ensure that at least 12.5% of the total labor hours are performed by qualified apprentices. The facility is placed in service on April 1, 2025, and Taxpayer A claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2025 tax return. A total of eight individuals performed construction, alteration, or repair work during the construction of the facility, all of whom were employed directly by Taxpayer A. Taxpayer A employed four journeyworkers and no qualified apprentices from April 1, 2023 through October 31, 2024. Taxpayer A hired four

qualified apprentices and retained three journeyworkers to perform construction on the facility for the period of November 1, 2024 through March 31, 2025. The registered apprenticeship program from which Taxpayer A requested the apprentices required a ratio of one journeyworker for every apprentice. In the first year of construction, a total of 10,000 labor hours were performed on construction, alteration, or repair work of the facility, with each journeyworker working 2,500 hours. In the second year of construction, 7,000 labor hours were performed on construction, alteration, or repair work of the facility, with each qualified apprentice and journeyworker working 1,000 hours during this time. On each day of work during the second year of construction, the three journeyworkers oversaw the work of the four qualified apprentices. A total of 17,000 labor hours were spent on the construction, alteration, or repair work of the facility, requiring that 2,125 labor hours be performed by qualified apprentices. Only 3,000 labor hours performed by qualified apprentices count towards the labor hours requirement because the ratio requirement was only satisfied with respect to the work of three qualified apprentices. Taxpayer A satisfied the labor hours requirement under paragraph (b)(2) of this section because more than 12.5% (3,000 qualified apprentice hours/17,000 total labor hours = 17.6%) of the total labor hours were performed by qualified apprentices. Taxpayer A was also subject to the participation requirement because four or more individuals employed by Taxpayer A performed construction work on the facility. Taxpayer A satisfied the participation requirement because Taxpayer A hired at least one qualified apprentice to perform construction, alteration, or repair with respect to the facility.

(ii) *Example 2.* Taxpayer B intends to construct a qualified facility to claim the increased credit amount under section 45(b)(6)(B)(iii) and executes a contract for the construction of the facility. On December 31, 2023, Taxpayer B expends sufficient funds to meet the 5 Percent Safe Harbor for beginning of construction in reliance on Notice 2022–61. Construction activities as defined in paragraph (d)(3) of this section start on January 1, 2024. In reliance on Notice 2022–61, Taxpayer B employs qualified apprentices for 12.5% of the total construction hours to complete the qualified facility. Because Taxpayer B applies the 12.5% applicable percentage in reliance on

Notice 2022–61 for construction beginning before January 1, 2024, but after December 31, 2022, Taxpayer B has satisfied the Labor Hours Requirement, assuming all other provisions of the Labor Hours Requirement are also satisfied.

(iii) *Example 3.* Taxpayer C starts construction of a qualified facility on April 1, 2023, and complies with the Labor Hours Requirement, the Ratio Requirement, and the Participation Requirement with respect to the construction of the facility before it is placed in service on April 1, 2025. Taxpayer C claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2025 tax return. The qualified facility was repaired from September 1, 2025, through October 31, 2025. No qualified apprentices were employed for the repairs. Taxpayer C did not fail the Apprenticeship Requirements because the Apprenticeship Requirements do not apply after the qualified facility is placed in service.

(iv) *Example 4.* Taxpayer D starts construction of a qualified facility on April 1, 2023. Accordingly, Taxpayer D must ensure that at least 12.5% of the total labor hours are performed by qualified apprentices. The facility is placed in service on April 1, 2025, and Taxpayer D claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2025 tax return. Taxpayer D employed 12 individuals to perform the construction, alteration, and repair work on the qualified facility. Taxpayer D is subject to the participation requirement. For the first year of construction, a total of 25,000 labor hours were performed on the construction, alteration, or repair of the facility, 3,000 of which were performed by qualified apprentices. For the second year of construction, an additional 25,000 labor hours were performed on the construction, alteration, or repair of the facility, 3,250 of which were performed by qualified apprentices. The ratio requirement was satisfied for all labor hours performed by qualified apprentices. Taxpayer D has satisfied the labor hours requirement because 12.5% (6,250 labor hours divided by 50,000 labor hours) of the total labor hours were performed by qualified apprentices.

(v) *Example 5.* Taxpayer E starts construction of a qualified facility on January 1, 2024. Accordingly, Taxpayer E must ensure that at least 15% of the total labor hours are performed by qualified apprentices. The facility is placed in service on June 1, 2026. Taxpayer E claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2026 tax return. All individuals who performed the construction, alteration,

or repair work were employed directly by Taxpayer E. A total of 50,000 labor hours were spent on the construction, alteration, or repair work of the facility, 7,000 of which were performed by qualified apprentices and the ratio requirement was met for all 7,000 labor hours. Qualified apprentices also spent 500 hours in classroom training at a location other than the location of the qualified facility in preparation for the performance of construction, alteration, or repair work at the qualified facility. Taxpayer E did not satisfy the labor hours requirement under paragraph (b)(2) of this section because less than 15% of the total labor hours were performed by qualified apprentices. The hours spent on classroom training at a location other than the location of the qualified facility in preparation for the construction, alteration, or repair of the facility are not considered labor hours performed by qualified apprentices.

(f) *Exceptions to the apprenticeship requirements.* If a taxpayer fails to satisfy the Apprenticeship Requirements in paragraph (a) of this section with respect to the construction, alteration, or repair of any qualified facility prior to the facility being placed in service, the taxpayer will nonetheless be deemed to have satisfied the Apprenticeship Requirements if the taxpayer has made a good faith effort to meet the Apprenticeship Requirements as described in paragraph (f)(1) of this section (Good Faith Effort Exception) or made the penalty payment provided in paragraph (f)(2) of this section (Apprenticeship Cure Provision) for any failures to which the Good Faith Effort Exception does not apply.

(1) *Good faith effort exception—(i) In general.* A taxpayer is deemed to have satisfied the Apprenticeship Requirements of this section with respect to a request for qualified apprentices if the taxpayer meets the following requirements:

(A) *Request for qualified apprentices.* The taxpayer, contractor, or subcontractor must submit a written request for qualified apprentices to at least one registered apprenticeship program that has a geographic area of operation that includes the location of the qualified facility; trains qualified apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the facility; and has a usual and customary business practice of entering into agreements with employers for the placement of qualified apprentices in the occupation for which they are training, consistent with the standards and requirements set forth in 29 CFR parts 29 and 30, and any subsequent guidance issued by the

Department of Labor. Such request must be in writing and sent electronically or by registered mail. The initial request to a registered apprenticeship program for qualified apprentices must be made no later than 45 days before the qualified apprentices are requested to start work. Any subsequent requests for qualified apprentices made to the same registered apprenticeship program after the initial request must be made no later than 14 days before the qualified apprentices are requested to start work. If there is no registered apprenticeship program that has a geographic area of operation that includes the location of the qualified facility; trains qualified apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the facility; and has a usual and customary business practice of entering into agreements with employers for the placement of qualified apprentices in the occupation for which they are training, consistent with the standards and requirements set forth in 29 CFR parts 29 and 30, and any subsequent guidance issued by the Department of Labor, the taxpayer will be deemed to satisfy the Good Faith Effort Exception with respect to the qualified apprentices that the taxpayer, contractor, or subcontractor would have requested.

(1) *Content of valid request.* The request of the taxpayer, contractor, or subcontractor must include the proposed dates of employment, occupation of qualified apprentices needed, location of the work to be performed, number of qualified apprentices needed, the number of labor hours expected to be performed by the qualified apprentices, and the name and contact information of the taxpayer, contractor, or subcontractor requesting employment of qualified apprentices from the registered apprenticeship program. Reasonable estimates of the foregoing information are permissible. The request must also state that the request for qualified apprentices is made with an intent to employ qualified apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program and to employ qualified apprentices consistent with the expected number of hours and dates of employment specified in the request. If the employer of the requested qualified apprentices is not the same as the taxpayer, contractor, or subcontractor submitting the request for qualified apprentices, then the request must include the name of the employer.

(2) *Duration of request.* If the taxpayer, contractor, or subcontractor

submits a request in accordance with paragraph (f)(1)(i)(A) of this section and the request is denied or not responded to, the taxpayer will be deemed to have exercised a Good Faith Effort with respect to the request for the period described in the request but not exceeding 365 days (366 days in case of a leap year). For requests that are denied or not responded to and include a period of employment for qualified apprentices that exceeds 365 days (366 days in case of a leap year), the taxpayer, contractor, or subcontractor must submit one or more additional requests with respect to the period of such request in excess of 365 days (366 days in case of a leap year). The taxpayer will not be deemed to have exercised a Good Faith Effort beyond 365 days (366 days in case of a leap year) of a previously denied request unless the taxpayer submits an additional request. There is no limit on the number of requests a taxpayer, contractor, or subcontractor may submit to one or more registered apprenticeship programs for purposes of the Good Faith Effort Exception and the taxpayer, contractor, or subcontractor is not required to make subsequent requests to the same registered apprenticeship program in order to qualify for the Good Faith Effort Exception. The 365 day (366 days in case of a leap year) duration of requests for qualified apprentices also applies in circumstances in which there is no registered apprenticeship program with a geographic area of operation that includes the location of the facility at the time a taxpayer, contractor, or subcontractor attempts to request qualified apprentices from a registered apprenticeship program.

(B) *Denial of request.* If a taxpayer, contractor, or subcontractor submits a request in accordance with paragraph (f)(1)(i)(A) of this section and the request is denied (including after an initial acceptance and before the scheduled qualified apprentice work starts), the taxpayer will be deemed to satisfy the requirements of section 45(b)(8)(A) through (C), and paragraphs (b) through (d) of this section, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program. The denial of a request is only valid for purposes of establishing a Good Faith Effort with respect to the portion(s) of the request that were denied. In the case of a partial

denial, a taxpayer, contractor, or subcontractor must accept the qualified apprentices offered in response to the request to satisfy the Good Faith Effort with respect to the portion of the request that was denied. If a request is partially denied, the qualified apprentice labor hours specified in the request that were denied that qualify for the Good Faith Effort Exception are considered to be labor hours performed by qualified apprentices. Subject to the requirements of paragraph (f)(1)(i)(A)(2) of this section, the taxpayer, contractor, or subcontractor does not need to follow up with the registered apprenticeship program after the initial request or after the receipt of a non-substantive response. The date on which a registered apprenticeship program received a request for qualified apprentices is determined by the date the electronic request is sent to the registered apprenticeship program or the date of delivery shown on a receipt from the registered mail delivery.

(C) *Response to a valid request.* A response to a valid request for qualified apprentices is a substantive written reply to the request that agrees, in whole or in part, to the specific requirements in the taxpayer's, contractor's, or subcontractor's request. If the registered apprenticeship program fails to provide a response to a request submitted in accordance with paragraph (f)(1)(i)(A) of this section within five business days after the date on which such registered apprenticeship program received the taxpayer's (or its contractor or subcontractor) request, then such request is deemed to be denied.

(D) *Employer sponsored apprenticeship programs.* A taxpayer, contractor, or subcontractor that sponsors one or more internal registered apprenticeship programs and that is unable to employ a sufficient number of qualified apprentices through such programs to meet the Apprenticeship Requirements must submit a request for qualified apprentices to at least one registered apprenticeship program that it does not sponsor in order to satisfy the Good Faith Effort Exception.

(ii) *Examples.* The provisions of this paragraph (f)(1) are illustrated by the following examples.

(A) *Example 1.* Taxpayer F submits a request to a registered apprenticeship program by email. The registered apprenticeship program responds three days later indicating that it has qualified apprentices ready to start work, but the reply email from the registered apprenticeship program is automatically forwarded to Taxpayer F's spam or junk mail folder, and Taxpayer F does not see the email response. Taxpayer F would

not qualify for the Good Faith Effort Exception with respect to this request because the registered apprenticeship program provided a substantive reply to the request that agreed to the specific requirements in Taxpayer F's request within five business days.

(B) *Example 2.* Contractor G submits a request for qualified apprentices from a registered apprenticeship program with an area of operation outside of the geographic area of the qualified facility. Contractor G's request is denied because the registered apprenticeship program does not operate in the geographic area where the qualified facility is located. Contractor G's request would not qualify for the Good Faith Effort Exception because the registered apprenticeship program does not have a geographic area of operation that includes the location of the qualified facility.

(C) *Example 3.* Contractor H submits a request for qualified apprentices to a registered apprenticeship program. Under its established standards and requirements, the registered apprenticeship program requires contractors to enter into an agreement to partner with that registered apprenticeship program. Contractor H refuses to enter into the agreement, and as a result, the registered apprenticeship program denies Contractor H's request for qualified apprentices. The requirement to enter into the agreement to partner with the registered apprenticeship program applies to all employers who request apprentices from the registered apprenticeship program. Neither the Department of Labor nor a recognized State apprenticeship agency has found the requirement to enter into such an agreement to be contrary to Department of Labor guidance regarding the administration of registered apprenticeship programs. Contractor H's request would not qualify for the Good Faith Effort Exception because Contractor H refused to comply with the established standards and requirements of the registered apprenticeship program.

(D) *Example 4.* Contractor I submits a request for qualified apprentices from a registered apprenticeship program on November 15, 2024. Contractor I's request states that it seeks to employ four qualified apprentices for the period starting on January 2, 2025, and ending June 30, 2025, for a total of 4,160 hours (1,040 hours $\times$ four qualified apprentices). On November 18, 2024, the registered apprenticeship program informs Contractor I that it can supply four qualified apprentices for the requested time period. On December 29, 2024, the registered apprenticeship

program informs Contractor I that it is only able to supply two of the four qualified apprentices. Contractor I does not submit any additional requests for qualified apprentices from a registered apprenticeship program. Contractor I's request would qualify for the Good Faith Effort Exception for 2,080 hours (1,040 hours for each of the two requested qualified apprentices that were denied after the request was initially accepted), provided Contractor I accepted the two qualified apprentices that were offered for the requested period.

(E) *Example 5.* Contractor J submits a written request for qualified apprentices from a registered apprenticeship program on June 1, 2025. Contractor J's request states that it seeks to employ three qualified apprentices for a period starting September 1, 2025, and ending December 31, 2026. The registered apprenticeship program denies the request on June 2, 2025. Contractor J's request satisfies the Good Faith Effort Exception with respect to the three qualified apprentices that were denied for the period beginning September 1, 2025, and ending August 31, 2026. Contractor J's request does not satisfy the Good Faith Effort Exception with respect to the period beginning September 1, 2026, and ending December 31, 2026, because that is the portion of the denied request that exceeded 365 days (366 days in case of a leap year) and Contractor J did not submit an additional valid request for that period.

(2) *Apprenticeship cure provision—(i) In general.* A taxpayer that fails to satisfy the Apprenticeship Requirements in paragraph (a) of this section with respect to the construction, alteration, or repair of any qualified facility prior to the facility being placed in service, will be deemed to satisfy the Apprenticeship Requirements if the taxpayer pays the IRS a penalty equal to \$50 multiplied by the total labor hours for which the requirements described in paragraph (b) or (d) of this section were not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

(A) *Total labor hours for which the labor hours requirement is not met.* For failures to meet the percentage of total labor hours requirement in paragraph (b)(1) of this section, the total labor hours for which the requirement was not satisfied is calculated as the difference between the total labor hours performed by qualified apprentices that would be required to meet the applicable percentage under paragraph (b)(2) of this section and the sum of the labor hours actually worked by all

qualified apprentices consistent with the applicable ratio of apprentices to journeymen and the hours qualifying for the Good Faith Effort exception.

(B) *Total labor hours for which the participation requirement is not met.* For failures to meet the participation requirement in paragraph (d) of this section, the total labor hours for which the requirement was not satisfied is calculated as the total labor hours of construction, alteration, or repair work with respect to the facility performed by all laborers or mechanics employed by the taxpayer, contractor, or subcontractor that failed to meet the participation requirement of the qualified facility divided by the number of laborers or mechanics employed by such taxpayer, contractor, or subcontractor that performed construction, alteration, or repair work on the facility.

(C) *Penalty payment not required if taxpayer ineligible for increased credit amount under section 45(b)(6)(B)(iii).* If the taxpayer claims the increased credit amount under section 45(b)(6)(B)(iii) and does not satisfy the Apprenticeship Requirements for the claimed increased credit amount, then the obligation to make the penalty payment under paragraph (f)(2)(i) of this section applies. If the IRS determines that a taxpayer claiming the increased credit amount under section 45(b)(6)(B)(iii) failed to meet the Apprenticeship Requirements and the taxpayer does not make the penalty payment required under paragraph (f)(2)(i) of this section, then no penalty is assessed under paragraph (f)(2)(i) of this section, and the taxpayer is not eligible for the increased credit amount under section 45(b)(6)(B)(iii). Taxpayers that are not eligible to claim the increased credit amount may still be eligible to claim the base amount of the renewable electricity production credit under section 45(a) if they meet the requirements to claim the credit.

(D) *Examples.* The provisions of paragraph (f)(2)(i) of this section are illustrated by the following examples, which do not take into account any possible application of the exception for Good Faith Effort Exception under paragraph (f)(1) of this section, the enhanced penalty payment requirement in the case of intentional disregard under paragraph (f)(2)(ii) of this section, or the inapplicability of the penalty in the case of a Qualifying Project Labor Agreement under paragraph (f)(2)(v) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(1) *Example 1.* Taxpayer K starts construction of a qualified facility on April 1, 2023. Accordingly, Taxpayer K must ensure that at least 12.5% of the total labor hours are performed by qualified apprentices. The facility is placed in service on April 1, 2025, and Taxpayer K claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2025 tax return. All individuals who performed the construction, alteration, or repair work were employed directly by Taxpayer K, including two qualified apprentices. Taxpayer K employed enough journeymen to satisfy the Ratio Requirement. A total of 50,000 labor hours were spent on the construction, alteration, or repair work of the facility, 6,000 of which were performed by qualified apprentices. Taxpayer K has satisfied the participation requirement because Taxpayer K has employed at least one qualified apprentice. Taxpayer K failed to satisfy the labor hours requirement under paragraph (b)(2) of this section because less than 12.5% of the total labor hours were performed by qualified apprentices. Qualified apprentices must have performed at least 6,250 labor hours ($50,000 \times 12.5\%$), so the total labor hours by which the labor hours requirement was not satisfied is 250 ($6,250 - 6,000$). To cure Taxpayer K's failure to meet the labor hours requirement, Taxpayer K must pay a penalty of \$12,500 ($250 \times \$50$).

(2) *Example 2.* Taxpayer L starts construction of a qualified facility on February 10, 2023. Accordingly, Taxpayer L must ensure that at least 12.5% of the total labor hours are performed by qualified apprentices. The facility is placed in service on February 10, 2026, and Taxpayer L claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2026 tax return. Taxpayer L employs 10 individuals to perform construction, alteration, or repair work of the facility, two of whom are qualified apprentices. Taxpayer L employed enough journeymen to satisfy the Ratio Requirement. Taxpayer L also hires Contractor M, who employs five individuals to perform construction, alteration, or repair work of the facility, none of whom are qualified apprentices. A total of 50,000 labor hours were spent on the construction, alteration, or repair work of the facility, 6,500 of which were performed by qualified apprentices. Of the total 50,000 labor hours, 33,000 labor hours were performed by individuals employed by Taxpayer L and 17,000 labor hours were performed by individuals employed by Contractor M. Taxpayer L has satisfied the labor

hours requirement under paragraph (b)(2) of this section because more than 12.5% of the total labor hours were performed by qualified apprentices. However, Taxpayer L failed to satisfy the participation requirement under paragraph (d) of this section because Contractor M employed five individuals but no qualified apprentices. The total labor hours for which the participation requirement was not satisfied is equal to the total labor hours performed by individuals employed by Contractor M (17,000) divided by the number of individuals employed by Contractor M (five) on the construction of the qualified facility, which is 3,400 hours ($17,000/5$). To cure the failure to meet the Apprenticeship Requirements, Taxpayer L must pay a penalty of \$170,000 ($3,400 \times \$50$).

(3) *Example 3.* Taxpayer N starts construction of a qualified facility on January 1, 2024. Accordingly, Taxpayer N must ensure that at least 15% of the total labor hours are performed by qualified apprentices. The facility is placed in service on January 1, 2025, and Taxpayer N claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2025 tax return. Taxpayer N employs 15 individuals to perform construction, alteration, or repair work of the facility, none of whom is a qualified apprentice. Taxpayer N also hires Contractor O, who employs five individuals to perform construction, alteration, or repair work of the facility, one of whom is a qualified apprentice. At the time Taxpayer N claims the increased credit amount, a total of 20,000 labor hours were spent on the construction, alteration, or repair work of the facility, 1,000 of which were performed by the qualified apprentice. Of the 20,000 total labor hours, 15,000 labor hours were performed by individuals employed by Taxpayer N and 5,000 labor hours were performed by individuals employed by Contractor O. Taxpayer N failed to satisfy the labor hours requirement under paragraph (b)(2) of this section because less than 15% of the total labor hours were performed by qualified apprentices. Qualified apprentices must have performed at least 3,000 labor hours, so the total labor hours by which the labor hours requirement was not satisfied is 2,000. Taxpayer N also failed to satisfy the participation requirement under paragraph (d) of this section because Taxpayer N employed 15 individuals but no qualified apprentices. The total labor hours for which the participation requirement was not satisfied is 1,000, which is equal to the total labor hours performed

by individuals employed by Taxpayer N (15,000) divided by the number of individuals employed by Taxpayer N (15), which is 1,000 (15,000/15). The total labor hours by which Taxpayer N failed to meet the labor hours and participation requirements is 3,000 (2,000 + 1,000). To cure Taxpayer N's failure to meet the Apprenticeship Requirements, Taxpayer N must pay a penalty of \$150,000 (3,000 × \$50).

(4) *Example 4.* Taxpayer P starts construction of a qualified facility on April 1, 2023. Accordingly, Taxpayer P must ensure that at least 12.5% of the total labor hours are performed by qualified apprentices. The facility is placed in service on January 5, 2024, and Taxpayer P claims the increased credit amount under section 45(b)(6)(B)(iii) on its 2024 tax return. Taxpayer P hires Contractors Q, R, and S to perform the construction, alteration, and repair of the qualified facility. Contractor Q employs 10 journeyworkers who work 10,000 hours and one qualified apprentice who works 400 hours. Contractor R employs four journeyworkers who work 4,000 hours and five qualified apprentices who work 2,000 hours. Contractor S employs three journeyworkers who work 3,000 hours and one qualified apprentice who works 400 hours. The registered apprenticeship program for all of the qualified apprentices has prescribed a 1:1 apprentice-to-journeyworker ratio. For each day, all journeyworkers and qualified apprentices employed by the contractors are on the job site. The contractors have satisfied the participation requirement under paragraph (d) of this section because they each employed one or more qualified apprentices. The total labor hours are 19,800 hours, and the total hours worked by qualified apprentices are 2,800. However, Contractor R employed one qualified apprentice in excess of the apprentice-to-journeyworker ratio (five qualified apprentices: four journeyworkers) that was prescribed by the apprenticeship program. Because Contractor R employed one qualified apprentice in excess of the apprentice-to-journeyworker ratio on each day that Contractor R performed work on the facility, 400 of the qualified apprentice hours worked by Contractor R do not count towards the labor hour requirement. Thus, Taxpayer P has failed to meet the labor hours requirement under paragraph (b)(2) of this section because only 2,400 hours worked by qualified apprentices are counted for purposes of the labor hours requirement. The total labor hours by

which Taxpayer P failed to meet the labor hours requirement is 75 (2,475 required hours (19,800 × 12.5%) – 2,400 qualified apprentice hours worked). To cure Taxpayer P's failure to meet the Apprenticeship Requirements, Taxpayer P must pay a penalty of \$3,750 (75 × \$50).

(ii) *Intentional disregard*—(A) *Application of section 45(b)(8)(D)(iii).* If the IRS determines that any failure to satisfy the Apprenticeship Requirements in paragraph (b) or (d) of this section is due to intentional disregard of those requirements, the amount of the penalty payment under paragraph (f)(2) of this section is increased to \$500 multiplied by the total labor hours for which the requirements described in paragraph (b) or (d) of this section were not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

(B) *Meaning of intentional disregard.* A failure to satisfy the Apprenticeship Requirements of paragraph (b) or (d) of this section is due to intentional disregard if it is knowing or willful.

(C) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure to satisfy the Apprenticeship Requirements is due to intentional disregard include, but are not limited to—

(1) Whether the failure was part of a pattern of conduct that includes repeated or systemic failures to ensure compliance with the Apprenticeship Requirements;

(2) Whether the taxpayer took steps to determine or review the applicable percentage of labor hours required to be performed by qualified apprentices;

(3) Whether the taxpayer sought to promptly cure any failures;

(4) Whether the taxpayer has been required to make a penalty payment under paragraph (f)(2) of this section in previous years;

(5) Whether the taxpayer included provisions in any contracts entered into with contractors that required the employment of qualified apprentices by the contractor and any subcontractors consistent with the labor hour requirement of section 45(b)(8)(A) and the participation requirement of section 45(b)(8)(C) and whether taxpayers regularly reviewed contractors' and subcontractors' use of qualified apprentices;

(6) Whether the taxpayer required contractors and subcontractors to forward to the taxpayer requests to registered apprenticeship programs within five business days of when requests were made;

(7) Whether the taxpayer made no attempt to comply with the Apprenticeship Requirements;

(8) Whether the taxpayer developed and used a plan to utilize qualified apprentices in the construction, alteration, or repair of the qualified facility;

(9) Whether the taxpayer, contractor, or subcontractor regularly followed up with registered apprenticeship programs regarding requests for qualified apprentices;

(10) Whether the taxpayer, contractor, or subcontractor contacted the Department of Labor's Office of Apprenticeship or relevant State apprenticeship agency for assistance in locating a registered apprenticeship program;

(11) Whether the taxpayer had in place procedures whereby individuals could report suspected failures to comply with the Apprenticeship Requirements, without retaliation or adverse action, whether taxpayer investigated such reports by individuals, and whether the taxpayer had internal controls to prevent the failures to comply with the Apprenticeship Requirements;

(12) Whether the taxpayer investigated complaints of retaliation or adverse action resulting from reports of suspected failures to comply with the Apprenticeship Requirements, and took appropriate actions to remedy any retaliation or adverse action and prevent it from reoccurring; and

(13) Whether taxpayer failed to maintain and preserve records sufficient to establish compliance with the apprenticeship requirements for relevant tax years.

(D) *Examples.* The provisions of paragraph (f)(2)(ii) of this section are illustrated by the following examples, which take into account certain facts and circumstances described in paragraph (f)(2)(ii)(C) of this section, that are considered in applying the enhanced penalty payment requirement in the case of intentional disregard. These examples do not take into account any possible application of the exception for Good Faith Effort Exception under paragraph (f)(1) of this section or the inapplicability of the penalty in the case of a Qualifying Project Labor Agreement under paragraph (f)(2)(v) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(1) *Example 1.* Taxpayer T failed to satisfy the labor hours requirement of section 45(b)(8)(A), the participation requirement of section 45(b)(8)(C), and the requirements described in

paragraphs (b) and (d) of this section. Taxpayer T did not create a plan to utilize qualified apprentices in the construction, alteration, or repair of the qualified facility. Taxpayer T did not include contract provisions that requires the hiring of qualified apprentices and the compliance with the labor hours requirement described in section 45(b)(8)(A) and the participation requirement described in section 45(b)(8)(C), nor did Taxpayer T require those contract provisions in any subcontracts. Neither Taxpayer T nor any contractors or subcontractors made any requests to a registered apprenticeship program for qualified apprentices. Taxpayer T also did not have procedures in place to audit whether contractors or subcontractors made a request to a registered apprenticeship program. Taxpayer T's failures to satisfy the labor hours requirement of section 45(b)(8)(A), the participation requirement of section 45(b)(8)(C), and the requirements described in paragraphs (b) and (d) of this section would be considered due to intentional disregard for purposes of paragraph (f)(2)(ii) of this section. After considering all of the facts and circumstances, Taxpayer T would be subject to the enhanced penalty payment described in paragraph (f)(2)(ii)(A) of this section.

(2) *Example 2.* Taxpayer U failed to satisfy the labor hours requirement of section 45(b)(8)(A), the participation requirement of section 45(b)(8)(C), and the requirements described in paragraphs (b) and (d) of this section. Taxpayer U created a plan to utilize qualified apprentices in the construction, alteration, or repair of a qualified facility. Taxpayer U included contract provisions that required the hiring of qualified apprentices and the compliance with the labor hours requirement described in section 45(b)(8)(A) and the participation requirement described in section 45(b)(8)(C) and required those contract provisions in any subcontracts. Taxpayer U and all contractors and subcontractors of Taxpayer U requested relevant qualified apprentices from registered apprenticeship programs. Taxpayer U also created procedures to audit whether contractors or subcontractors made a request to a registered apprenticeship program and ensured that the registered apprenticeship programs were contacted in writing. In cases in which a registered apprenticeship program replied to a proper request described in paragraph (f)(1)(i)(A)(1) of this section with a non-substantive response, Taxpayer U

encouraged follow-ups to the registered apprenticeship program. Additionally, Taxpayer U contacted and encouraged contractors and subcontractors to contact the Department of Labor's Office of Apprenticeship and the State apprenticeship agency in cases in which Taxpayer U, or any contractors or subcontractors, experienced difficulty in locating a registered apprenticeship program. After considering all of the facts and circumstances, Taxpayer U's failure to satisfy the labor hours requirement of section 45(b)(8)(A), the participation requirement of section 45(b)(8)(C), and the requirements described in paragraphs (b) and (d) of this section would not be considered due to intentional disregard for purposes of paragraph (f)(2)(ii) of this section.

(E) *Rebuttable presumption of no intentional disregard.* If a taxpayer makes the penalty payment required by this paragraph (f)(2) before receiving notice of an examination from the IRS with respect to a claim for the increased credit amount under section 45(b)(6), the taxpayer will be presumed not to have intentionally disregarded the Apprenticeship Requirements in paragraphs (b) and (d) of this section. The IRS may rebut this presumption based on the relevant facts and circumstances.

(iii) *Deficiency procedures to apply.* The penalty payment required by this paragraph (f)(2) is subject to deficiency procedures of subchapter B of chapter 63 of the Code.

(iv) *Penalty payments in the event of a transfer pursuant to section 6418.* To the extent an eligible taxpayer, as defined in section 6418(f)(2), has determined an increased credit amount under section 45(b)(6) and transferred such increased credit amount as part of a specified credit portion, the obligation to make a penalty payment under paragraph (f)(2)(i) of this section remains with the eligible taxpayer. The obligation for an eligible taxpayer to satisfy the Apprenticeship Requirements becomes binding upon the earlier of the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. If the IRS determines that the eligible taxpayer failed to meet the Apprenticeship Requirements and the eligible taxpayer does not then make the penalty payments provided in paragraph (f)(2)(i) of this section, then no penalty is assessed under paragraph (f)(2)(i) of this

section, and the eligible taxpayer is not eligible for the increased credit amount determined under section 45(b)(6)(B)(iii). Section 6418 and the regulations under section 6418 control for determining the impact of an eligible taxpayer's failure to cure on any transferee taxpayer.

(v) *Project labor agreements.* The penalty payment required by this paragraph (f)(2) to cure a failure to satisfy the Apprenticeship Requirements in paragraphs (b) and (d) of this section does not apply with respect to the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a Qualifying Project Labor Agreement as defined in § 1.45–7(c)(6)(ii).

(g) *Definitions.* Solely for purposes of this section, the following definitions apply:

(1) *Construction, alteration, or repair.* The term *construction, alteration, or repair* has the same meaning as in § 1.45–7(d)(3).

(2) *Contractor.* The term *contractor* has the same meaning as in § 1.45–7(d)(4).

(3) *Employed.* The term *employed* has the same meaning as in § 1.45–7(d)(5).

(4) *Established standards and requirements.* The term *established standards and requirements* means those standards of apprenticeship required by 29 CFR parts 29 and 30 for registered apprenticeship programs, as well as any additional requirements established by the registered apprenticeship program for the placement of apprentices and applicable to all employers participating in the registered apprenticeship program. Such requirements must not be found by the U.S. Department of Labor's Office of Apprenticeship or a recognized State apprenticeship agency to be contrary to Department of Labor guidance regarding the administration of registered apprenticeship programs.

(5) *Geographic area.* The term *geographic area* for purposes of determining the geographic area of operation of a registered apprenticeship program has the same meaning as the term *geographic area* and *locality* defined in § 1.45–7(d)(7).

(6) *Journeyworker.* The term *journeyworker* means an individual who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. Use of the term may also refer to a mentor, technician, specialist, or other skilled individual who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or

through practical on-the-job experience and formal training.

(7) *Labor hours*. The term *labor hours* means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor. Labor hours do not include hours worked by foremen, superintendents, owners, or persons employed in bona fide executive, administrative, or professional capacities (as defined in 29 CFR part 541).

(8) *Qualified apprentice*. The term *qualified apprentice* means an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program. An individual is participating in a registered apprenticeship program if, the individual has entered into a written agreement with a registered apprenticeship program containing the terms and conditions of the employment and training of the apprentice and has been registered as an apprentice with the U.S. Department of Labor's Office of Apprenticeship or a recognized State apprenticeship agency during the time period in which work is performed by the apprentice for the taxpayer, contractor, or subcontractor, or the individual is in the first 90 days of probationary employment as an apprentice in a registered apprenticeship program and the individual has been certified by the U.S. Department of Labor's Office of Apprenticeship or a recognized State apprenticeship agency as eligible for probationary employment as an apprentice.

(9) *Registered apprenticeship program*. A *registered apprenticeship program* means a program that has been registered by the U.S. Department of Labor's Office of Apprenticeship or a recognized State apprenticeship agency, pursuant to the National Apprenticeship Act and its implementing regulations for registered apprenticeship at 29 CFR parts 29 and 30, as meeting the basic standards and requirements of the Department of Labor for approval of such program for Federal purposes. Registration of a program is evidenced by a Certificate of Registration or other written indicia. Registered apprenticeship programs include those that taxpayers, contractors, or subcontractors sponsor, create, or partner with and include joint and non-joint programs (as those terms are used in 29 CFR part 29).

(10) *State apprenticeship agency*. The term *State apprenticeship agency* means

an agency of a State government that has responsibility and accountability for apprenticeship within the State and that has been recognized and authorized by the U.S. Department of Labor's Office of Apprenticeship to register and oversee apprenticeship programs and agreements for Federal purposes.

(11) *Subcontractor*. The term *subcontractor* has the same meaning as in § 1.45-7(d)(10).

(12) *Taxpayer*. The term *taxpayer* has the same meaning as in § 1.45-7(d)(11).

(h) *Applicability date*. This section applies to qualified facilities placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified facilities placed in service in taxable years ending on or before June 25, 2024, and qualified facilities placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

§§ 1.45-9—1.45.11 [Reserved]

§ 1.45-12 Recordkeeping and reporting.

(a) *In general*. The increased credit amount determined under section 45(b)(6) must be claimed in such form and manner as may be prescribed in IRS forms, instructions, publications, or guidance published in the Internal Revenue Bulletin. See § 601.601 of this chapter. Consistent with sections 45 and 6001 and § 1.6001-1(e), a taxpayer claiming or transferring (under section 6418) an increased credit amount under section 45(b)(6)(A) must maintain and preserve records sufficient to establish compliance with the requirements of sections 45(b)(6)(B), (b)(7), and (8), as applicable. In the case of any credit transferred under section 6418 reflecting an increased credit amount, the requirement to maintain and preserve sufficient records demonstrating compliance with the applicable prevailing wage and apprenticeship requirements remains with the eligible taxpayer that determined and transferred the credit. For definitions of terms used in this section, see § 1.45-7(d) with respect to the prevailing wage requirements, and § 1.45-8(g) with respect to the apprenticeship requirements.

(b) *Recordkeeping for the prevailing wage and apprenticeship requirements*. With respect to each qualified facility for which a taxpayer is claiming or transferring (under section 6418) a credit reflecting an increased credit amount under section 45(b)(6)(A)(iii), the taxpayer must maintain and

preserve records sufficient to demonstrate compliance with the applicable prevailing wage and apprenticeship requirements in sections 45(b)(7) and (8) and §§ 1.45-7 and 1.45-8, respectively. At a minimum, those records include payroll records for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, contractor, or subcontractor in the construction, alteration, or repair of the qualified facility. If work is done pursuant to a Qualifying Project Labor Agreement as defined in § 1.45-7(c)(6)(ii), the taxpayer should also maintain and preserve records related to that Qualifying Project Labor Agreement.

(c) *Recordkeeping for the prevailing wage requirements*. In addition to payroll records otherwise maintained by the taxpayer, records sufficient to demonstrate compliance with the applicable prevailing wage requirements in section 45(b)(7) and § 1.45-7 may include Forms WH-347 completed fully and correctly with information for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, a contractor, or subcontractor with respect to each qualified facility. Records sufficient to demonstrate compliance with the applicable prevailing wage requirements in section 45(b)(7) and § 1.45-7 may also include the following other documents and records with respect to each qualified facility:

(1) Identifying information for each laborer and mechanic who worked on the construction, alteration, or repair of the qualified facility, including the name, the last four digits of a social security or tax identification number, address, telephone number, and email address;

(2) The location and type of construction of the qualified facility;

(3) The labor classification(s) the taxpayer applied to each laborer and mechanic for determining the prevailing wage rate and documentation supporting the applicable classification, including the applicable wage determination and copies of executed contracts for construction, alteration, or repair of the qualified facility with any contractor or subcontractor;

(4) The hourly rate(s) of wages paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof) for each applicable labor classification described in paragraph (c)(3) of this section;

(5) Records to support any contribution irrevocably made on behalf of each laborer or mechanic to a trustee or other third person pursuant to a bona fide fringe benefit program, and the rate

of costs that were reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a plan or program described in 40 U.S.C. 3141(2)(B), including records demonstrating that the enforceable commitment was provided in writing to the laborers and mechanics affected;

(6) The total number of hours worked by each laborer and mechanic per pay period;

(7) The total wages paid to each laborer and mechanic for each pay period (including identifying any deductions from wages);

(8) Records to support wages paid to any qualified apprentices at less than the applicable prevailing wage rates, including records reflecting an individual's participation in a registered apprenticeship program and the applicable wage rates and apprentice-to-journeyworker ratios prescribed by the registered apprenticeship program;

(9) The amount and timing of any correction and penalty payments and documentation reflecting the calculation of the correction and penalty payments, including records to demonstrate eligibility for the penalty waiver in § 1.45–7(c)(6);

(10) Records to document any failures to pay prevailing wages and the actions taken to prevent, mitigate, or remedy the failure (for example, records demonstrating that the taxpayer (or an independent third party engaged by the taxpayer) regularly reviewed payroll practices, included requirements to pay prevailing wages in contracts with contractors, and posted prevailing wage rates in a prominent place on the job site); and

(11) Records related to any complaints received by the taxpayer, contractor, or subcontractor that the taxpayer, contractor, or subcontractor was paying wages less than the applicable prevailing wage rate for work performed by laborers and mechanics with respect to the qualified facility.

(d) *Recordkeeping for the apprenticeship requirements.* Records sufficient to demonstrate compliance with the applicable apprenticeship requirements in section 45(b)(8) and § 1.45–8 may include the following information with respect to each qualified facility:

(1) Any written requests for the employment of qualified apprentices from registered apprenticeship programs, including any contacts with the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency regarding requests for qualified apprentices from registered apprenticeship programs;

(2) Any agreements entered into with registered apprenticeship programs with respect to the construction, alteration, or repair of the facility;

(3) Documents reflecting the standards and requirements of all registered apprenticeship programs from which taxpayers, contractors, or subcontractors employed qualified apprentices with respect to the construction, alteration, or repair of the facility (including the applicable ratio requirement prescribed by each registered apprenticeship program);

(4) The total number of labor hours worked with respect to the construction, alteration, or repair of the qualified facility, including and identifying hours worked by each qualified apprentice;

(5) Records reflecting the daily ratio of apprentices to journeyworkers;

(6) Records demonstrating compliance with the Good Faith Effort Exception in § 1.45–8(f)(1) (including requests for qualified apprentices, correspondence with registered apprenticeship programs, and denials of requests);

(7) The amount and timing of any penalty payments and documentation reflecting the calculation of the penalty payments;

(8) Records to document any failures to satisfy the apprenticeship requirements under section 45(b)(8) and § 1.45–8 and the actions taken to prevent, mitigate, or remedy the failure; and

(9) Records related to any complaints received by the taxpayer, contractor, or subcontractor that the taxpayer, contractor, or subcontractor was not satisfying the apprenticeship requirements under section 45(b)(8) and § 1.45–8.

(e) *Satisfaction of the recordkeeping requirements.* Taxpayers may satisfy the recordkeeping requirements in this section as follows:

(1) Taxpayers may collect and physically retain relevant records from every contractor and subcontractor. The records may have personally identifiable information (PII) redacted to comply with applicable privacy laws. Unredacted information must be made available to the IRS upon request;

(2) Taxpayers, contractors, and subcontractors may provide relevant records to a third party vendor to physically retain on behalf of the taxpayer. The records may have PII redacted to comply with applicable privacy laws. Unredacted records must be made available to the IRS upon request; or

(3) Taxpayers, contractors, and subcontractors may each physically retain the relevant unredacted records for their own employees. Unredacted

records must be made available to the IRS upon request.

(f) *Applicability date.* This section applies to qualified facilities placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified facilities placed in service in taxable years ending on or before June 25, 2024, and qualified facilities placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

■ **Par. 4.** Sections 1.45L–1 through 1.45L–3 are added to read as follows:

§ 1.45L–1—1.45L–2 [Reserved]

§ 1.45L–3 Rules relating to the increased credit amount for prevailing wage.

(a) *In general.* With respect to a qualified residence described in section 45L(a)(2)(B), the credit determined under section 45L(a)(2)(B)(i) is \$2,500 and the credit determined under section 45L(a)(2)(B)(ii) is \$5,000 if the qualified residence described in section 45L(a)(2)(B)—

(1) Meets the requirements under section 45L(c)(1)(A) or 45L(c)(1)(B), as applicable;

(2) Is constructed by an eligible contractor;

(3) Is acquired by a person for use as a residence during the taxable year; and

(4) Satisfies the prevailing wage requirements of section 45(b)(7) and § 1.45–7, and the recordkeeping and reporting requirements of § 1.45–12, with respect to the construction of the qualified residence before such residence is acquired by a person for use as a residence.

(b) *Definitions—(1) Qualified residence.* For purposes of this section, a *qualified residence* means a qualified new energy efficient home as defined in section 45L(b)(2).

(2) *Eligible contractor.* For purposes of this section, an *eligible contractor* means an eligible contractor as defined in section 45L(b)(1).

(c) *Applicability date.* This section applies to any qualified new energy efficient home acquired for use as a residence in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to any qualified new energy efficient home acquired for use as a residence in taxable years ending on or before June 25, 2024, and any qualified new energy efficient home acquired for use as a residence in taxable years ending after June 25, 2024, the construction of which

begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

■ **Par. 5.** Section 1.45Q–6 is added to read as follows:

§ 1.45Q–6 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If the requirements in paragraph (b) of this section are satisfied with respect to any qualified facility or any carbon capture equipment placed in service at that facility, then the credit determined under section 45Q(a) is multiplied by five.

(b) *Qualified facility and carbon capture equipment requirements.* The requirements of this paragraph (b) are satisfied if any of the following requirements are met—

(1) With respect to a qualified facility within the meaning of section 45Q the construction of which begins on or after January 29, 2023, and any carbon capture equipment within the meaning of section 45Q placed in service at such facility, the taxpayer meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7 with respect to the construction of such facility and equipment and with respect to the alteration or repair of such facility and equipment for any taxable year, for any portion of such taxable year that is within the period described in section 45Q(3)(A) or (4)(A) after the facility or equipment was originally placed in service, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12;

(2) With respect to any carbon capture equipment within the meaning of section 45Q the construction of which begins on or after January 29, 2023, and that is installed at a qualified facility the construction of which began prior to January 29, 2023, the taxpayer meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7 with respect to the construction of such equipment and with respect to the alteration or repair of such equipment for any taxable year, for any portion of such taxable year that is within the period described in section 45Q(3)(A) or (4)(A) after the equipment was originally placed in service, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12; or

(3) Carbon capture equipment within the meaning of section 45Q the construction of which began prior to January 29, 2023, and such equipment is installed at a qualified facility the construction of which began prior to January 29, 2023.

(c) *Applicability date.* This section applies to qualified facilities and carbon capture equipment placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified facilities and carbon capture equipment placed in service in taxable years ending on or before June 25, 2024, and qualified facilities and carbon capture equipment placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

■ **Par. 6.** Sections 1.45U–1 through 1.45U–3 are added to read as follows:

§§ 1.45U–1—1.45U–2 [Reserved]

§ 1.45U–3 Rules relating to the increased credit amount for prevailing wage.

(a) *In general.* If a qualified nuclear power facility satisfies the prevailing wage requirements of section 45(b)(7) and § 1.45–7 for any alteration or repair with respect to such qualified nuclear power facility within the meaning of section 45U(b)(1), and the recordkeeping and reporting requirements of § 1.45–12, then the amount of the zero-emission nuclear power production credit for the taxable year is equal to the credit amount determined under section 45U(a) multiplied by five.

(b) *Qualifying Project Labor Agreement for a qualified nuclear power facility.* For the purposes of section 45U and § 1.45–7(c)(6)(ii), in order to be a Qualifying Project Labor Agreement, such agreement must, at a minimum:

(1) Be a collective bargaining agreement with a one or more labor organizations (as defined in 29 U.S.C. 152(5)) of which employees of the qualified nuclear power facility are members and such agreement establishes the terms and conditions of employment at the qualified nuclear power facility;

(2) Contain guarantees against strikes, lockouts, and similar job disruptions;

(3) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the collective bargaining agreement; and

(4) Contain provisions to pay wages at rates not less than the prevailing rates in accordance with subchapter IV of chapter 31 of title 40 of the United States Code.

(c) *Applicability date.* This section applies to alterations and repairs of qualified nuclear power facilities that are performed after June 25, 2024, for

taxable years beginning after June 25, 2024. Taxpayers may apply this section to alterations and repairs of qualified nuclear power facilities that are performed prior to June 25, 2024 provided that taxpayers follow this section in its entirety and in a consistent manner.

■ **Par. 7.** Sections 1.45V–1 through 1.45V–3 are added to read as follows:

§§ 1.45V–1—1.45V–2 [Reserved]

§ 1.45V–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified clean hydrogen production facility (as defined in section 45V(c)(3)) satisfies the requirements in paragraph (b) of this section, then the amount of the credit for producing qualified clean hydrogen described in section 45V(b)(2) is equal to the credit amount determined under section 45V(a) multiplied by five.

(b) *Qualified clean hydrogen production facility requirements.* A qualified clean hydrogen production facility satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A facility the construction of which began prior to January 29, 2023, and that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7 with respect to alterations or repairs of a qualified facility within the meaning of section 45V that occur after January 29, 2023 (to the extent applicable), and that meets the recordkeeping and reporting requirements of § 1.45–12; or

(2) A facility that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12 with respect to the construction, alteration, or repair of a qualified facility within the meaning of section 45V.

(c) *Applicability date.* This section applies to qualified clean hydrogen production facilities placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified clean hydrogen production facilities placed in service in taxable years ending on or before June 25, 2024, and qualified clean hydrogen production facilities placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this

section in its entirety and in a consistent manner.

■ **Par. 8.** Sections 1.45Y–1 through 1.45Y–3 are added to read as follows:

§§ 1.45Y–1—1.45Y–2 [Reserved]

§ 1.45Y–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified clean electricity production facility satisfies the requirements in paragraph (b) of this section, the amount of the credit for producing clean electricity determined under section 45Y(a) is the alternative amount described in section 45Y(a)(2)(B), subject to adjustment provided by section 45Y(c).

(b) *Qualified clean electricity production facility requirements.* A qualified facility satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A facility with a maximum net output of less than one megawatt (as measured in alternating current);

(2) A facility the construction of which began prior to January 29, 2023; or

(3) A facility that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12 with respect to the construction, alteration, or repair of a qualified clean electricity production facility within the meaning of section 45Y.

(c) *Applicability date.* This section applies to qualified clean electricity production facilities placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified clean electricity production facilities placed in service in taxable years ending on or before June 25, 2024, and qualified clean electricity production facilities placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

■ **Par. 9.** Sections 1.45Z–1 through 1.45Z–3 are added to read as follows:

§§ 1.45Z–1—1.45Z–2 [Reserved]

§ 1.45Z–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified facility (as defined in section 45Z(d)(4)) satisfies the requirements in paragraph (b) of this section, the applicable amount used to calculate the clean fuel production

credit determined under section 45Z(a) is the alternative amount described in section 45Z(a)(2)(B) or 45Z(a)(3)(A)(ii), as applicable, subject to the inflation adjustment provided by section 45Z(c).

(b) *Qualified facility for clean fuel production requirements.* A qualified facility (as defined in section 45Z(d)(4)) satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A qualified facility that is placed in service after December 31, 2024, that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12 with respect to the construction, alteration, or repair of such qualified facility; or

(2) A qualified facility that is placed in service before January 1, 2025, that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7 with respect to any alteration or repair of such qualified facility that is performed in taxable years beginning after December 31, 2024, the apprenticeship requirements of section 45(b)(8) and § 1.45–8 with respect to the construction of such qualified facility, and the recordkeeping and reporting requirements of § 1.45–12.

(3) *Special transition rule for facilities placed in service before January 1, 2025.* Solely for purposes of the apprenticeship requirements of section 45(b)(8) and § 1.45–8, taxpayers that place a qualified facility in service before January 1, 2025, must satisfy the apprenticeship requirements with respect to construction of the facility that occurs 90 days after June 25, 2024.

(c) *Applicability date.* This section applies to qualified facilities for clean fuel production placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified facilities for clean fuel production placed in service in taxable years ending on or before June 25, 2024, and qualified facilities for clean fuel production placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

■ **Par. 10.** Sections 1.48C–1 through 1.48C–3 are added to read as follows:

§§ 1.48C–1—1.48C–2 [Reserved]

§ 1.48C–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualifying advanced energy project (as defined in section 48C(c)(1)(A)) satisfies the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12, with respect to the re-equipping, expansion, or establishment of a qualifying advanced energy project within the meaning of section 48C, the qualifying advanced energy project credit determined under section 48C(a) for any taxable year with respect to credits allocated pursuant to section 48C(e) is an amount equal to 30 percent of the qualified investment for the taxable year. For purposes of this section, the term re-equipping, expansion, or establishment means those activities described in §§ 1.45–7(d)(3) and 1.45–8(g)(1) that are performed with respect to a qualifying advanced energy project within the meaning of section 48C before such project is placed in service.

(b) *Applicability date.* This section applies to qualifying advanced energy projects placed in service in taxable years ending after June 25, 2024, and the re-equipping, expansion, or establishment of which begins after June 25, 2024. Taxpayers may apply this section to qualifying advanced energy projects placed in service in taxable years ending on or before June 25, 2024, and qualifying advanced energy projects placed in service in taxable years ending after June 25, 2024, the re-equipping, expansion, or establishment of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

■ **Par. 11.** Sections 1.179D–1 through 1.179D–3 are added to read as follows:

§§ 1.179D–1—1.179D–2 [Reserved]

§ 1.179D–3 Rules relating to the increased deduction for prevailing wage and apprenticeship.

(a) *In general.* If any energy efficient commercial building property (as defined in section 179D(c)(1)), energy efficient building retrofit property (as defined in section 179D(f)(3)), or property installed pursuant to a qualified retrofit plan (as defined in section 179D(f)(2)) satisfies the requirements in paragraph (b) of this section, the applicable dollar value for determining the maximum amount of the deduction determined under section 179D(b)(2) is the increased amount

described in section 179D(b)(3)(A). For purposes of this section, installation means those activities described in §§ 1.45–7(d)(3) and 1.45–8(g)(1) that are performed with respect to energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan within the meaning of section 179D before such property is placed in service.

(b) *Certain energy efficient commercial building property requirements.* Energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan satisfies the requirements of this paragraph (b) if it is one of the following—

(1) Property the installation of which began prior to January 29, 2023; or

(2) Property that meets the prevailing wage requirements of section 45(b)(7) of the Code and § 1.45–7, the apprenticeship requirements of section 45(b)(8) of the Code and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12, all with respect to the installation of any property.

(c) *Applicability date.* This section applies to energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan installed in taxable years ending after June 25, 2024, and the installation of which begins after June 25, 2024. Taxpayers may apply this section to energy efficient commercial building property, energy efficient building retrofit property, or property installed

pursuant to a qualified retrofit plan installed in taxable years ending on or before June 25, 2024, and energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan installed in taxable years ending after June 25, 2024, the installation of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: June 9, 2024.

Aviva R. Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

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Part III

Federal Communications Commission

47 CFR Part 1

Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 24–86; FCC 24–68; FRS ID 226976]

Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on revising the fee schedule of FY 2024 regulatory fees and on several additional regulatory fee issues, as described in the text below.

DATES: Comments must be submitted on or before July 15, 2024. Reply comments must be submitted on or before July 29, 2024.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments identified by MD Docket No. 23–159, by any of the following methods below. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

1. Comment Filing Procedures.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

2. **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

1. Pursuant to section 1.49 of the Commission's rules, 47 CFR 1.49, parties to this proceeding must file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

2. **Materials in Accessible Formats.** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

3. Availability of Documents.

Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Notice of Proposed Rulemaking* (NPRM), FCC 24–68, MD Docket No. 24–86, adopted on June 12, 2024 and released on June 13, 2024. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference

Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

I. Administrative Matters

4. **Ex Parte Information.** The proceeding initiated by this NPRM, in which we seek comment on proposals as described below, shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

5. **Initial Regulatory Flexibility Analysis.** The Regulatory Flexibility Act of 1980, as amended (RFA), requires

that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals on small entities accompanying the NPRM. The IRFA is set forth in Section VII of this document.

6. *Initial Paperwork Reduction Act of 1995 Analysis.* This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on any information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

II. Introduction

7. For fiscal year (FY) 2024, the Commission is required to collect \$390,192,000 in regulatory fees, an amount equal to our annual salaries and expenses (S&E) appropriation, pursuant to section 9 of the Communications Act of 1934, as amended (Communications Act or Act), and the Commission’s FY 2024 Further Consolidation Appropriations Act. In this annual Notice of Proposed Rulemaking (NPRM), we seek comment on the Commission’s proposed methodology and regulatory fees for FY 2024, as set forth in Tables 3, 4, and 7. In 2023, the Commission eliminated the International Bureau, established a new Space Bureau and a new Office of International Affairs, and reallocated the authorities and functions of the International Bureau to the Space Bureau and the Office of International Affairs. In light of these actions, we reviewed the FY 2023 reallocations to determine if any changes are warranted, and propose to slightly revise the FY 2023 reallocations to the core bureaus, including the new Space Bureau and the new Office of International Affairs, for FY 2024, as further detailed below.

8. We also seek comment on several additional regulatory fee issues, including: (i) the calculation of television broadcaster regulatory fees; (ii) how our proposals may promote or

inhibit advances in diversity, equity, inclusion, and accessibility; (iii) the end of temporary relief measures we implemented in response to the coronavirus disease 2019 (COVID–19) pandemic; (iv) our proposal to discontinue the Commission’s presumption that broadcast stations that are dark or were recently dark or bankrupt are experiencing financial hardship sufficient to justify waiver of their regulatory fees; and (v) ways in which the Commission might assist regulatory fee payors in meeting their annual regulatory fee obligations.

III. Background

9. Section 9 of the Communications Act of 1934 obligates the Commission to assess and collect regulatory fees each year in an amount that can reasonably be expected to equal the amount of its annual S&E appropriation. Thus, the Commission has no discretion regarding the total amount to be collected in any given fiscal year. For FY 2024, the Commission must recover \$390,192,000 as set forth in the FY 2024 Further Consolidation Appropriations Act. Regulatory fees recover all of the Commission’s direct costs, such as salaries and expenses; indirect costs, such as overhead functions; statutorily required tasks that do not directly equate with oversight and regulation of a particular regulatee, but instead benefit the Commission and the industry as a whole; and support costs such as rent, utilities, and equipment. Regulatory fees must recover the total amount of the appropriation; therefore, they also cover the Commission’s costs incurred in oversight and regulation of entities that are statutorily exempt from paying regulatory fees (*i.e.*, governmental and nonprofit entities, amateur radio operators, and noncommercial radio and television stations), entities that are exempt from payment of regulatory fees because their total assessed annual regulatory fees fall below the annual de minimis threshold, and entities whose regulatory fees are waived. Pursuant to section 9(d) of the Communications Act, the Commission’s methodology for assessing regulatory fees must “reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”

10. In section 9 of the Communications Act, Congress prescribed a method of collecting an amount equal to the full S&E appropriation by keying the regulatory

fee assessment to the Commission’s FTE burden. As a result, the fee assigned to each regulatory fee category relates to the FTE burden associated with oversight and regulation of each regulatory fee category by the relevant core bureaus. Because the total amount the Commission must collect in an offsetting collection generally changes each fiscal year, payors’ regulatory fees will also typically change each fiscal year as a mathematical consequence of the changes in the total amount to be collected, the number of FTEs, and projected unit estimates for each regulatory fee category. Beyond those changed collection requirements, in considering changes, additions, or deletions to the regulatory fee schedule the Commission focuses on direct FTE cost burden related to the regulatory fee category at issue within each core bureau. The Commission has explained that, consistent with its statutory directive, it bases regulatory fees on the direct FTEs in core bureaus. The Commission has stated that, given the Communication Act’s explicit language that fees must reflect FTEs, the FTE counts are by far the most administrable starting point for regulatory fee allocations.

11. The Commission does not assign direct FTEs within a bureau to specific fee categories by rote or at random, but rather in a manner that reflects the time spent by FTEs on a regulatory fee category, which is in itself a reflection of “benefit” to the fee category. Thus, we apportion regulatory fees across fee categories based on the number of direct FTEs in each core bureau to take into account factors that are reasonably related to the payor’s benefits.

12. *Full Time Equivalent (FTE) Allocation and Fee Calculation.* The Commission allocates FTEs according to the nature of the work performed by its different organizational units. If the work performed by a group or office is directly related to our oversight and regulation of a regulatory fee category or categories in one of the five core licensing bureaus, then such FTEs are counted as a direct FTE. If the work cannot be allocated to one of the bureau’s designated regulatory fee categories, the work performed is counted as an indirect FTE. Under this framework, the Commission, therefore, assesses the allocation of FTEs by first determining the number of direct FTEs, those non-auctions FTEs that work in each of the Commission’s core bureaus (*i.e.*, the Wireless Telecommunications Bureau, the Media Bureau, part of the Wireline Competition Bureau, the Office of International Affairs, and the Space Bureau). Regulatory fees are initially

apportioned across the regulatory fee categories based on the number of direct FTEs in each core bureau whose time is focused on a particular industry segment and then is adjusted “to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”

13. The FTE time devoted to developing and implementing the Commission’s spectrum auctions is not included in the calculation of regulatory fees and is not offset by the collection of regulatory fees. Instead, such FTE time is offset by the auction proceeds that the Commission is permitted to retain pursuant to section 309(j)(8)(B) of the Communications Act and the Commission’s annual appropriation. Thus, spectrum auctions FTEs are not included in the calculation of regulatory fees and the Commission’s methodology excludes all spectrum auction-related FTEs and their overhead from the regulatory fee calculations. To the extent that FTEs within core bureaus spend a portion of their time on auctions issues and a portion of their time on appropriated issues, their time is split and only the non-auctions portion of their time is reflected in the relevant core bureau’s FTE count.

14. Early in each fiscal year, the Commission receives FTE data from its Human Resources Management office and identifies FTEs at the core bureau level (*i.e.*, direct FTEs), which is then used to determine the FTE allocations for the five core bureaus. This FTE data is then validated through consultation with the bureaus and apportioned to the various fee categories within each core bureau based on FTE time spent on each fee category. After the number of direct FTEs is determined for each core bureau of the Commission, the direct FTE numbers are used to calculate the percentage of the total amount of regulatory fees to be collected for a given fiscal year. We allocate appropriated amounts to be recovered proportionally based on the number of direct FTEs within each core bureau. Those proportions are then subdivided within each core bureau into fee categories among the regulatees served by the core bureau. Finally, within each regulatory fee category the amount to be collected is divided by a unit that allocates the regulatee’s proportionate share based on an objective measure.

15. In prior regulatory fee proceedings, the Commission has categorized the FTEs in the Enforcement Bureau, Consumer and Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, Chairwoman’s and Commissioners’

Offices, Office of the Managing Director, Office of General Counsel, Office of Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Workplace Diversity, Office of Media Relations, Office of Economics and Analytics, and Office of Administrative Law Judges, along with some FTEs in the Wireline Competition Bureau and the International Bureau as indirect for regulatory fee purposes. Unlike the work of direct FTEs, the work of indirect FTEs in the non-core bureaus and offices is not focused on the oversight and regulation of a specific category of regulatory fee payors, but instead benefits the Commission, the telecommunications industry, and the public as a whole. The Commission’s high percentage of indirect FTEs demonstrates that many of our activities and costs are not limited to a particular fee category.

16. *Adjustments and Amendments to Regulatory Fee Schedule.* In accordance with the statute, each year, in an annual fee proceeding, the Commission proposes adjustments to the prior fee schedule under section 9(c) to “(A) reflect unexpected increases or decreases in the number of units subject to the payment of such fees; and (B) result in the collection of the amount required” by the Commission’s annual appropriation. The Commission will also propose amendments to the fee schedule under section 9(d) “if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities. Pursuant to section 9A(b)(1) of the Act, the Commission must notify Congress immediately upon adoption of any adjustment. Pursuant to section 9A(b)(2) of the Act, the Commission must notify Congress at least 90 days prior to making effective any amendments to the regulatory fee schedule.

17. In implementing our section 9 authority, we consider the adoption of a new regulatory fee category or a change in an existing regulatory fee category only when we develop a sufficient basis for making the change, and we work to ensure that all changes serve the goal of ensuring that our assessment of regulatory fees is fair, administrable, and sustainable. The Commission has adopted new regulatory fee categories and new methodologies for calculating regulatory

fees when there is a sufficient basis for doing so under the relevant statutory provisions and precedent, and based on the record. Most recently, in 2020, the Commission included non-U.S. licensed space stations with U.S. market access grants in the existing “Space Stations” fee category. The Commission concluded that assessing the same regulatory fees on non-U.S. licensed space stations with U.S. market access as assessed on U.S. licensed space stations would better reflect the benefits received by these operators, *i.e.*, the adjudicatory, enforcement, regulatory, and international coordination activities by the Commission’s FTEs in the International Bureau.

IV. Notice of Proposed Rulemaking

18. In this NPRM, we propose and seek comment on regulatory fees for FY 2024 as set forth in Tables 3, 4, and 7. We also seek comment on several additional regulatory fee issues, including: (i) the calculation of television broadcaster regulatory fees; (ii) how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; (iii) the end of temporary relief measures we implemented in response to the COVID-19 pandemic; (iv) our proposal to discontinue the Commission’s presumption that broadcast stations that are dark or were recently dark or bankrupt are experiencing financial hardship sufficient to justify waiver of their regulatory fees; and (v) ways in which the Commission might assist regulatory fee payors in meeting their annual regulatory fee obligations.

A. Assessment of Regulatory Fees

1. Methodology for Assessing Regulatory Fees

19. In FY 2024, the Commission is required to collect \$390,192,000 in regulatory fees. Section 9 of the Communications Act requires us to set regulatory fees to “reflect the full-time equivalent number of employees within the bureaus and offices of the Commission adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.” Our first step in establishing our regulatory fee schedule is to take into consideration the adjustments necessitated by the more apparent changes from the prior fiscal year regulatory fee proceeding, *e.g.*, changes in the (i) FY appropriation, (ii) FTE levels, and (iii) relevant unit measures for each regulatory fee category. Such adjustments are often considered ministerial. Our second step is a more

substantive review where we look to the core bureaus within the Commission in order to identify the number of direct non-auction FTEs in each core bureau for purposes of the regulatory fee calculation. After we determine the number of direct FTEs for each core bureau, we use these numbers to start our calculations of the percentage of the total amount of regulatory fees to be collected for a given fiscal year from each regulatory fee category within each core bureau. These proportional calculations allocate all Commission non-auction related costs across all regulatory fee categories.

a. Indirect FTE Reallocations

20. In FY 2023, the Commission found that the Commission's general methodology for establishing regulatory fees has been, and continues to be, appropriate and consistent with section 9 of the Communications Act. The Commission therefore implemented this same methodology, but, in addition to looking at the current allocation of direct FTEs within the core bureaus, it also conducted a high-level analysis of the work of the Commission's indirect FTEs in non-core bureaus and offices and, where the Commission could determine with reasonable accuracy for FY 2023 that such work was spent on the regulation and oversight of a regulatory fee payor, the Commission reallocated the burden of that work as direct to a core bureau, solely for regulatory fee purposes. As a result of this analysis, for FY 2023, 63 indirect FTEs located in the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau that were previously considered to be indirect FTEs were allocated as direct FTEs to a core bureau, for regulatory fee purposes, based on the Commission's evaluation of the burden of their work. In the *FY 2023 Report and Order*, the Commission explained that, while the Commission will continue to evaluate whether any FTEs should be reallocated for regulatory fee purposes each year when reviewing and validating the FTE data, the Commission will exercise its discretion regarding where to focus its analytical efforts each year to best respond to changes in the Commission's substantive work and organization, and changes in the telecommunications industry itself. The Commission therefore indicated that where its analysis merits inclusion of proposed reallocations, it will seek comment on any such potential reallocation of FTEs in an annual proceeding.

21. For FY 2024, we propose to employ the same methodology the

Commission employed in FY 2023. We conclude, however, that changes within the Commission's organizational structure and additional staff resources merit a review of the FY 2023 reallocations. Specifically, effective on April 10, 2023, the Commission eliminated the International Bureau, established a new Space Bureau and a new Office of International Affairs, and reallocated the International Bureau's authorities and functions between the Space Bureau and the Office of International Affairs. In light of these organizational changes, we reviewed FTEs that were previously allocated to the International Bureau as direct for regulatory fee purposes and we analyzed the work done by those FTEs to determine whether such FTEs should be allocated to the Office of International Affairs or to the Space Bureau. In addition, FTE levels in the Public Safety and Homeland Security Bureau have increased during this fiscal year. In light of these changes, we analyzed the work of the new staff in the Public Safety and Homeland Security Bureau to determine whether any of their work should be allocated as indirect FTEs or allocated as direct FTEs to a core bureau for regulatory fee purposes. We also analyzed the work of the FTEs in the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau that we reallocated in FY 2023 as direct FTEs to core bureaus for regulatory fee purposes to determine whether their work assignments continue to merit allocation of those FTEs as direct to a core bureau for regulatory fee purposes.

22. Also, in instances where an FTE was previously allocated to the International Bureau as direct for regulatory fee purposes, we analyzed the specific work done by the FTE to determine whether such FTE should be allocated to the new Office of International Affairs or the Space Bureau. We limited our analytical efforts for FY 2024 to address the specific changes within the Commission and did not conduct a high-level analysis this fiscal year of all FTEs within the Commission as we believe the adjustments we make for FY 2024 reasonably reflect the major changes in the burden of work within the Commission. We thus utilize our discretion to ensure that we conduct our annual review in a manner that is fair, manageable, and sustainable. As described in more detail below, we propose that, for FY 2024, approximately 69 indirect FTEs should be reallocated as direct FTEs to a core

bureau for regulatory fee purposes, based on our evaluation of the burden of their work. We find that these proposed reallocations are consistent with section 9 of the Communications Act, which requires us to base our methodology on the number of FTEs in calculating regulatory fees.

b. Space and Earth Station Regulatory Fee Rates

23. On March 13, 2024, the Commission released the *Space and Earth Station Regulatory Fees NPRM* seeking comment on proposed changes to the regulatory fee methodology used for assessing space and earth station regulatory fees for FY 2024. In this NPRM, we propose regulatory fee rates in Tables 3 and 4, based on our existing methodology, and regulatory fee rates in Table 7 based on the proposals set forth in the *Space and Earth Station Regulatory Fees NPRM*. Our proposed space and earth station regulatory fee rates are, however, estimates because we recognize that, ultimately, final space and earth station regulatory fee rates are dependent upon the outcome of the *Space and Earth Station Regulatory Fees NPRM* proceeding. We also recognize that there could be a combination of the proposals based upon commenters' feedback and the outcome of the *Space and Earth Station Regulatory Fees NPRM*. Accordingly, we do not seek comment again in this proceeding on the specific proposals to adjust our existing methodology for assessing space and earth station regulatory fees, or to adopt an alternative methodology for assessing space station regulatory fees, which were set forth in the *Space and Earth Station Regulatory Fees NPRM*. Instead, comments pertaining to the proposals set forth in the *Space and Earth Station Regulatory Fees NPRM* regarding the categories and allocation of fees for space and earth stations should be submitted in the proceeding, MD Docket No. 24–85, and need not be submitted again in response to this NPRM. In this item, we specifically seek comment on the proposed regulatory fee rates for space and earth station payors for FY 2024 based on the proposals set forth in the *Space and Earth Station Regulatory Fees NPRM*.

24. The existing schedule of regulatory fees for space and earth station payors is contained in section 1.1156 of the Commission's rules. There are four current categories of space station payors: Space Stations (Geostationary Orbit); Space Stations (Non-Geostationary Orbit)—Less Complex; Space Stations (Non-Geostationary Orbit)—Other; and Space

Station (Small Satellites). “Less Complex” NGSO systems are defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS). “Small Satellites” are space stations licensed pursuant to the streamlined small satellite process contained in section 25.122 of the Commission’s rules. The Space Stations (Small Satellites) category also includes “small spacecraft” licensed pursuant to the analogous streamlined procedures of section 25.123 of the rules. In addition, there is a single category of earth station payors—Earth Stations: Transmit/Receive & Transmit only. Since our fiscal year 2020 proceeding, non-U.S. licensed space stations granted market access to the United States through a Petition for Declaratory Ruling or through earth station licenses are subject to regulatory fees.

25. Under the existing methodology of calculating regulatory fees for space and earth station payors, the Commission multiplies the space station and earth station FTE allocation percentages by the target goal of collections (overall total amount to collect), respectively, to determine the amount to be collected from each regulatory fee category. Since 2020, the space station allocation percentages reflect an 80/20 split between the GSO and NGSO regulatory fee categories, respectively. The amount to be collected by the space station and earth station regulatory fee categories, divided by the projected number of units, determines the fee rate. There are several space station regulatory fee categories—GSO, NGSO “other,” NGSO “less complex,” and small satellites—and each of these regulatory fee categories has its own respective FTE allocation percentage to determine the fee rate. The small satellite fee rate is calculated by taking the average of the calculated fee rate for space stations in the NGSO “other” and NGSO “less complex” categories. The average fee rate is then multiplied by 5% (1/20) and rounded to the nearest \$5 to determine the small satellite fee rate. The small satellite fee rate is then multiplied by the number of small satellite units, and the amount derived is divided by an 80/20 split and reduced from the target goals of NGSO-Other and NGSO-Less Complex, respectively. After reducing the NGSO “other” and NGSO “less complex” target goal amounts, the fee rates for both of these NGSO regulatory fee categories are re-calculated (dividing the revised target goal by its respective

unit count) to reflect a slightly lower fee rate. We calculate the proposed regulatory fees for space and earth station payors for FY 2024 under this existing methodology in Tables 3 and 4, taking into account the changes in the Commission’s S&E appropriation for FY 2024, as well as the change in the percentage of direct FTEs allocated to the Space Bureau as a result of the elimination of the International Bureau and the establishment of a new Space Bureau and a new Office of International Affairs. We seek comment on these proposed regulatory fee amounts.

26. In the *Space and Earth Station Regulatory Fees NPRM*, we sought comment on a range of proposed changes related to the regulatory fee methodology for assessing space and earth station regulatory fees. The space and earth station regulatory fees calculated under our existing methodology could change substantially if these proposed changes are adopted, in part or in whole, and are effective for FY 2024. For example, if the proposal is adopted to amend the existing fee methodology to change the allocation of regulatory fee assessments for GSO and NGSO space stations from the current 80/20 split to a 60/40 split, the proposed regulatory fees for NGSO space stations will be greater than the amount calculated under the existing methodology, and the proposed regulatory fees for GSO space stations will be less. Similarly, the change proposed in the *Space and Earth Station Regulatory Fees NPRM* to assess regulatory fees on authorized, not just operational, space stations may increase the number of units of space station payors, which in turn could decrease the calculated per unit regulatory fee for GSO and NGSO space station payors. This and other proposed changes, such as the proposal to adopt regulatory fees for Rendezvous and Proximity Operations (RPO), On-Orbit Servicing (OOS), and Orbital Transfer Vehicles (OTV), could assess fees on space station regulatees that may not be assessed regulatory fees under the existing methodology. Furthermore, the earth station regulatory fees calculated for FY 2024 under the existing methodology would increase substantially if the proposals of the *Space and Earth Station Regulatory Fees NPRM* were adopted and effective for FY 2024, which could also result in a decrease in the amount of regulatory fees calculated for space station payors. Finally, the alternative methodology for assessing regulatory fees proposed in the *Space and Earth Station Regulatory*

Fees NPRM would replace the existing four categories of space station regulatory fees for GSO and NGSO space stations with a single fee category for all space stations and a fee for small satellites. This would also substantially change the regulatory fees calculated for FY 2024 under the existing methodology.

27. We provide calculations of possible space and earth station regulatory fees if the proposals of the *Space and Earth Station Regulatory Fees NPRM* were adopted and effective for FY 2024 in Table 7. We acknowledge the difficulty of making these calculations while the *Space and Earth Station Regulatory Fees NPRM* proceeding is still ongoing and it is unknown whether the proposals will be adopted, in part, in whole, or a variation thereof, in time to be effective for FY 2024. In addition, the number of units per fee category depends on whether certain proposals in the *Space and Earth Station Regulatory Fees NPRM* are adopted or not. To address these difficulties, we explain, as part of our calculations within Table 7, the methodology and the underlying assumptions for arriving at the calculated regulatory fees in order to provide as much information as reasonably possible at this time to potential commenters. We seek comment on these calculations and the methodology and underlying assumptions that went into them.

28. Based on the foregoing, we seek comment on these proposals and on the proposed FY 2024 regulatory fees as set forth in Tables 3, 4, and 7. We recognize that, due to the potential variations to our proposals as described in the *Space and Earth Station Regulatory Fees NPRM*, there could be slight changes to the proposed regulatory fee rates upon adoption of the regulatory fee rates in a subsequent Report and Order. Any proposals or comments requesting a change or modification to our proposed methodology in this NPRM and regulatory fees for FY 2024 should include a thorough analysis showing a sufficient basis for making the change. Commenters should also provide alternative options for the Commission to meet its statutory obligation to collect the full amount of the appropriation by the end of the fiscal year, and indicate how such proposed alternative options are fair, administrable, and sustainable.

2. Adjustment of Reallocations, for Regulatory Fee Purposes, of Certain Indirect FTEs as Direct FTEs

29. According to information provided by our Human Resources Management office, there currently are

404 direct non-auctions FTEs for FY 2024 that are distributed among the core bureaus. In FY 2023, the Commission reallocated 63 indirect FTEs from the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau and added those FTEs as direct to the relevant core bureau solely for the purposes of collecting regulatory fees. Today, we revisit those reallocations in light of the elimination of the International Bureau and the creation of the Space Bureau and the Office of International Affairs, and additional hires in the Public Safety and Homeland Security Bureau. As a result of our analysis, for FY 2024 we proposed to reallocate 69 indirect FTEs from the Office of Economics and Analytics, the Office of General Counsel, and Public Safety and Homeland Security Bureau and add those FTEs as direct to the

relevant core bureau solely for the purposes of collecting regulatory fees.

30. Our calculations of direct FTEs under our proposal, which are more fully detailed below, would be as follows: Office of International Affairs (8), Space Bureau (51), Wireless Telecommunications Bureau (121), Wireline Competition Bureau (153.25), and Media Bureau (140). Based on these proposed reallocations and after adjustments are made to these direct FTE counts to implement Commission precedent, we would collect approximately \$6.59 million (1.69%) in fees from the Office of International Affairs regulatory fee payors; \$42.14 million (10.80%) in fees from the Space Bureau regulatory fee payors; \$100.05 million (25.64%) in fees from Wireless Telecommunications Bureau regulatory fee payors; \$126.69 million (32.47%) in fees from Wireline Competition

Bureau regulatory fee payors; and \$114.72 million (29.40%) in fees from Media Bureau regulatory fee payors.

31. For purposes of this determination for FY 2024, we used the same analysis as was done in FY 2023 and evaluated whether measurable FTE time for FY 2024 is primarily being spent on the regulation and oversight of regulatory fee payors. Specifically, where the amount of work under consideration equaled .5 FTE or less, we rounded down to the nearest whole FTE and only proposed our reallocations in one full FTE increments. The Commission concluded that less than a full-time FTE demonstrates that the work being done is appropriately considered to be indirect and should not be reassigned. The table below summarizes the FY 2023 reallocations and the proposed FY 2024 reallocations.

TABLE 1—CORE BUREAU FY 2023 FTE PERCENTAGES WITH FY 2024 PROPOSED FTE REALLOCATION ADJUSTMENTS

Core Bureau	FY 2023 FTE % with FTE reallocations	FY 2023 amount with FTE reallocations (millions)	FY 2024 proposed FTE % with adjusted FTE reallocations	FY 2024 amount with FTE reallocations (millions)
		FY 2023 appropriation was \$390.192		FY 2024 appropriation is \$390.192
Wireline Bureau	35.91	\$140.12	32.47	\$126.69
Media Bureau	31.76	123.9	29.40	114.72
Media Bureau; subcategory Broadcasters	14.12	55.10	13.09	51.08
Media Bureau; subcategory Cable	17.64	68.83	16.31	63.64
Wireless Bureau	24.56	95.83	25.64	100.05
International Bureau	7.77	30.32	N/A	N/A
Office of International Affairs	N/A	N/A	1.69	6.59
Space Bureau	N/A	N/A	10.80	42.14

32. Based upon our re-evaluation of indirect FTE time in the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau, we propose that 69 indirect FTEs should be reallocated as direct FTEs because they devote their time to the oversight and regulation of regulatory fee payors. We therefore propose to reallocate the FTE time as direct to the relevant core bureaus and office for calculating regulatory fees. Consistent with the Commission's determination in FY 2023, we propose to continue to reallocate two direct FTEs from the Media Bureau as indirect because the nature of their work is sufficiently linked to work that is similar to that performed in the Enforcement Bureau, which has previously been categorized as indirect. We find no reason at this time to alter this determination and conclude that the time of two FTEs in the Media Bureau should continue be

considered indirect. We seek comment on this conclusion. Below, we discuss our analysis for the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau.

33. *Office of Economics and Analytics (OEA) FTEs.* In FY 2023, the Commission reallocated 30 indirect FTEs from OEA as direct to a core bureau for regulatory fee purposes as follows: two to the International Bureau, eight to the Wireless Telecommunications Bureau, 13 to the Wireline Competition Bureau, and seven to the Media Bureau. Consistent with the Commission's analysis in the *FY 2023 Regulatory Fee Report and Order*, we continue to find that there is measurable work done by OEA that is being done directly in furtherance of the oversight and regulation of regulatory fee payors in certain industry segments. For FY 2024, staff analysis of OEA's work, however, has slightly changed

from FY 2023 to FY 2024 and rather than reallocating two FTEs as direct for regulatory fee purposes as was done in FY 2023, based on OEA staff analysis, specifically one FTE is reallocated to the Space Bureau based on OEA's work on satellite service related issues. We therefore propose to adjust the FY 2023 allocations for OEA and allocate 29 indirect FTEs from OEA as direct to a core bureau for a regulatory fee purposes for FY 2024 as follows: one to the Space Bureau, eight to the Wireless Telecommunications Bureau, 13 to the Wireline Competition Bureau, and seven to the Media Bureau. We seek comment on this proposed allocation for FY 2024.

34. *Office of General Counsel (OGC) FTEs.* In FY 2023, the Commission reallocated five indirect FTEs from OGC as direct to a core bureau for regulatory fee purposes as follows: one to the Wireline Competition Bureau, two to the Wireless Telecommunications

Bureau, one to the Media Bureau, and one to the International Bureau. Consistent with the Commission's analysis in the *FY 2023 Regulatory Fee Report and Order*, we continue to find that the majority of OGC's work is appropriately categorized as indirect, however, certain aspects of OGC's work are sufficiently linked to the oversight and regulation of individual regulatory fee categories such that, for FY 2024, four FTEs from OGC should be reallocated as direct FTEs to a relevant core bureau for regulatory purposes. For FY 2024, staff analysis of OGC's work has also slightly changed from FY 2023 to FY 2024 in that no OGC indirect FTEs will be reallocated to what was formerly the International Bureau (now, the Office of International Affairs and the Space Bureau). We make this proposal because OGC FTE time devoted to the Office of International Affairs' efforts is for FY 2024 focused on Office of International Affairs' matters other than the Office of International Affairs' regulatory fee payors (satellite and international bearer circuits and submarine cables). We therefore propose to adjust the FY 2023 allocations for OGC and allocate four indirect FTEs from OGC as direct to a core bureau for regulatory fee purposes for FY 2024 as follows: one to the Wireline Competition Bureau, two to the Wireless Telecommunications Bureau, and one to the Media Bureau. We seek comment on this proposed allocation for FY 2024.

35. *Public Safety and Homeland Security Bureau (PSHSB) FTEs.* In FY 2023, the Commission reallocated 28 indirect FTEs from PSHSB as direct to a core bureau for regulatory fee purposes as follows: 13 to the Wireless Telecommunications Bureau, nine to the Wireline Competition Bureau, and six to the Media Bureau. PSHSB advises and coordinates within the Commission on all matters pertaining to public safety, homeland security, national security, cybersecurity, emergency management and preparedness, disaster management, and related matters. Consistent with the Commission's analysis in the *FY 2023 Report and*

Order, to the extent that the bureau leads initiatives that strengthen public safety and emergency response capabilities enabling the Commission to assist the public, first responders, law enforcement, hospitals, the communications industry and all levels of government in times of emergency, we continue to conclude that the majority of its work is best categorized as indirect. In FY 2023, the Commission, however, concluded that specific aspects of the FTE work within PSHSB's three divisions—the Policy and Licensing Division, the Operations and Emergency Management Division, and the Cybersecurity and Communications Reliability Division—is sufficiently linked to the oversight and regulation of individual regulatory fee categories such that certain FTE time should be reallocated as direct to a relevant core bureau for regulatory purposes. For FY 2024, we continue to conclude that certain aspects of the of the FTE work in these divisions of PSHSB can be allocated as direct to a core bureau because such work provides direct oversight and regulation of specific regulatory fee categories. Staff therefore analyzed the work of the 28 indirect FTEs which were allocated as direct to a core bureau in FY 2023 and their analysis of the work performed of the 28 indirect FTEs remains unchanged. Since FY 2023, PSHSB has 11 additional FTEs. Consistent with the Commission's analysis in the FY 2023 Regulatory Fee Report and Order, we analyzed the work PSHSB was able to accomplish with the additional 11 FTE resources and determined it was directly in furtherance of the oversight and regulation of regulatory fee payors of a core bureau. We therefore propose to adjust the FY 2023 allocations and allocate a total of 38 PSHSB FTEs as direct to a core for regulatory fee purposes for FY 2024 as follows: 16 to the Wireless Telecommunications Bureau, 11 to the Wireline Competition Bureau, and nine to the Media Bureau, and two to the Space Bureau. We seek comment on this proposal.

36. *Conclusion of the Proposal to Reallocate Certain Indirect FTEs from OEA, OGC, and PSHSB as Direct FTEs to a Relevant Core Bureau.* As represented above, FTE time associated with the proposed reallocations for regulatory fee purposes would be added to the relevant core bureau. Such a reallocation for regulatory fee purposes would result in increasing the number of direct FTEs in a core bureau and reducing the total number of indirect FTEs within the Commission. Because our underlying methodology for calculating regulatory fees remains unchanged, we conclude that our fee regulatory fee calculation continues to be consistent with section 9 of the Communications Act, which requires us to base our methodology on the number of FTEs in calculating regulatory fees. We seek comment on this conclusion.

37. We continue to be mindful that our treatment of FTEs as direct or indirect can change over time based on our evaluation of the FTE burden associated with the Commission's work assignments, fluctuations within industry segments, and needs of specific regulatory fee payors. As depicted in the table below, the percentage of regulatory fees allocated to each core bureau has generally decreased due to the increase in the number of FTEs from FY 2023 within the core bureaus. The only exception to this is the FY 2024 allocation of direct FTEs to the Space Bureau. Because there are more direct FTEs in the Space Bureau attributable to space and earth station fee payors than there were in the International Bureau, the percentage of regulatory fees allocated to the Space Bureau in FY 2024 is larger than the FY 2023 allocation to the International Bureau. The table below shows the proposed reallocations of a total of 69 FTEs to each of the core bureaus, as discussed above. Such reallocations, for regulatory fee purposes, would be proportionally distributed within the core bureau. We seek comment on these reallocations for FY 2024.

TABLE 2—FTE ALLOCATIONS: FY 2023 AND FY 2024

Core bureau/ office	FY 2023 FTE reallocations	Total # of direct FY 2023 FTEs <i>With</i> FTE reallocations	FY 2023 % after reallocations	Total # of direct FY 2024 FTEs <i>Without</i> FTE reallocations	FY 2024 FTE reallocations	Total # of Direct FY 2024 FTEs <i>With</i> FTE reallocations	FY 2024 % after reallocations
International Bu- reau (Reorga- nized in April 2023).	+2 from OEA ... + 1 from OGC .. Total additional FTEs +3.	31	7.77	N/A	N/A	N/A	N/A

TABLE 2—FTE ALLOCATIONS: FY 2023 AND FY 2024—Continued

Core bureau/ office	FY 2023 FTE reallocations	Total # of direct FY 2023 FTEs <i>With</i> FTE reallocations	FY 2023 % after reallocations	Total # of direct FY 2024 FTEs <i>Without</i> FTE reallocations	FY 2024 FTE reallocations	Total # of Direct FY 2024 FTEs <i>With</i> FTE reallocations	FY 2024 % after reallocations
Office of International Affairs (Submarine Cable and International Bearer Circuits).	N/A	N/A	N/A	8	+0 from OEA ... +0 from OGC ... Total additional FTEs +0.	8	1.69
Space Bureau (Space and Earth Stations).	N/A	N/A	N/A	48	+1 from OEA ... +2 from PSHSB Total additional FTEs +3.	51	10.80
Wireless Telecommunications Bureau.	+8 from OEA ... +2 from OGC ... +13 from PSHSB. Total additional FTEs +23.	98	24.56	95	+8 from OEA ... +2 from OGC ... +16 from PSHSB. Total additional FTEs +26.	121	25.64
Wireline Competition Bureau.	+13 from OEA +1 from OGC ... +9 from PSHSB Total additional FTEs +23.	143.25	35.91	128.25	+13 from OEA +1 from OGC ... +11 from PSHSB. Total additional FTEs +25.	153.25	32.47
Media Bureau	+7 from OEA ... +1 from OGC ... +6 from PSHSB –2 from MB Reallocated as Indirect. Total additional FTEs +12.	128	31.76	125	+7 from OEA ... +1 from OGC ... +9 from PSHSB –2 from EB Reallocated as Indirect. Total additional FTEs +15.	140	29.40
Total	63	400.25	100	404.25	69	473.25	100

38. As reflected in the table above, our proposals to adjust the reallocation of 63 indirect FTEs as direct for regulatory fee purposes in FY 2023 to 69 indirect FTEs as direct for regulatory fee purposes in FY 2024 will result in a 17.1% increase in our overall direct FTE count for FY 2024, and an increase of 18.2% in the overall direct FTE count from FY 2023. We continue to make these proposals consistent with our long standing regulatory fee methodology and conclude that our determinations are reasonably accurate for fiscal year 2024. We seek comment on our proposals and this tentative conclusion. While our proposals adjust the reallocations for regulatory fee purposes for FY 2024, we are mindful that FTE's work in OEA, OGC, and PSHSB can change from year to year and we want to avoid any unplanned shifts in regulatory fees on an annual basis that would undermine the goals of having a fair, administrable, and sustainable program. In light of the creation of the Space Bureau and Office of International Affairs and the expanded number of FTEs in PSHSB, it was necessary to review the

Commission's FY 2023 allocations to ensure a reasonably accurate allocation of direct and indirect FTEs to the core bureaus for the calculation of regulatory fees for FY 2024.

B. Elimination of the International Bureau

39. In January 2023, the Commission eliminated the International Bureau and established: (1) a Space Bureau to handle policy and licensing matters related to satellite communications and other in-space activities under the Commission's jurisdiction; and (2) an Office of International Affairs to handle issues involving foreign and international regulatory authorities as well as international telecommunications and submarine cable licensing. The reorganization became effective on April 10, 2023. When the Commission adopted regulatory fees for FY 2023, it noted that it would be the last year for doing so for the International Bureau. The Commission anticipated that the elimination of the International Bureau and the creation of the Space Bureau

and the Office of International Affairs, could result in a change in the number of FTEs, due to increased oversight of various relevant industries.

Accordingly, the Commission stated that it would closely review the Space Bureau and Office of International Affairs FTEs to determine the appropriate number of FTEs in each entity as a result of the reorganization and how they will be apportioned among the different services. Accordingly, for purposes of FY 2024 and going forward, we discuss the functions and FTE allocations of the Office of International Affairs and the Space Bureau below.

1. Office of International Affairs

40. The Office of International Affairs (OIA) is responsible for the Commission's engagement of foreign and international regulatory authorities, including multilateral and regional organizations. OIA also facilitates through rulemaking and licensing the Commission's development of policies regarding international telecommunications facilities and

services, including submarine cables, and advises and makes recommendations to the Commission on foreign ownership issues. In undertaking these functions, OIA implements Commission policies to facilitate competition and foreign investment in U.S. international telecommunications markets while ensuring, in consultation with relevant federal partners, that national security, law enforcement, foreign policy, and trade policy concerns are addressed. OIA also is responsible for intergovernmental leadership, negotiation and international and inter-agency representational functions. Additionally, OIA oversees and coordinates the Commission's global participation in international and multilateral conferences, regional organizations, cross-border negotiations and international standard setting efforts. Further, OIA also oversees bilateral meetings with other countries and foreign government officials.

41. OIA is composed of the Telecommunications and Analysis Division (TAD) and the Global Strategy and Negotiation Division (GSN). Because the majority of OIA's work does not benefit specific regulatory fee payors, but rather the government as whole, consistent with Commission precedent, we conclude that the majority of the work of its FTEs is appropriately categorized as indirect. As the Commission discussed in the *FY 2023 Report and Order*, all FTEs in GSN are considered indirect FTEs. Specifically, GSN staff represent the Commission in international conferences, meetings, and negotiations, and manage Commission participation in the fellowship telecommunication training program for foreign officials offered through the U.S. Telecommunications Training Institute (USTTI) as well as the Commission's International Visitors Program. They also participate in various international and regional organizations such as the International Telecommunication Union (ITU), the International Maritime Organization, the International Civil Aeronautics Organization, the Organization for Economic Cooperation and Development, the Asia Pacific Economic Cooperation, and the Inter-American Telecommunication Commission. GSN also coordinates cross-border issues with Mexico and Canada that involve a wide range of services, such as maritime, aeronautical, mobile and fixed satellite, broadcasting, mobile, and terrestrial wireless services. In addition, GSN's functions include international broadcasting station

licensing and coordination of frequencies for International Broadcast licenses at the ITU. GSN's multilateral and bilateral international work ultimately benefits all fee payors by maintaining and advancing the United States' global leadership and interests, which encompasses, among others, U.S. trade, foreign policy, and national security interests. Thus, the work of GSN does not benefit a specific fee payor, but rather the government as whole and is therefore appropriately categorized as indirect. There are, however, 8 FTEs within TAD that work on international bearer circuit related issues, including the services provided over submarine cables, and their time can be appropriately categorized as direct in furtherance of the oversight and regulation of specific regulatory fee payors. Therefore, we conclude, for FY 2024, that there are a total of 47 FTEs within OIA, 8 direct FTEs and 39 indirect FTEs. We seek comment on this conclusion.

2. Space Bureau

42. The Space Bureau plays a key role in advancing the Commission's Space Innovation Agenda to meet the needs of the next generation Space Age. The Space Bureau promotes a competitive and innovative global communications marketplace by leading policy and licensing matters related to satellite and space-based communications and activities. Among its responsibilities, the Space Bureau leads complex policy analysis and rulemakings; authorizes satellite and earth station systems used for space-based services; streamlines regulatory processes to provide maximum flexibility for operators to meet customer needs; and fosters the efficient use of scarce spectrum and orbital resources. The Space Bureau also serves as the Commission's focal point for coordination with other U.S. government agencies on matters of space policy and governance, and collaborates with OIA for consultations with other countries, international and multi-lateral organizations, and foreign government officials that involve satellite and space policy matters.

43. The Space Bureau is comprised of the Satellite Licensing Division (SLD), Satellite Programs & Policy Division (SPPD), and the Earth Station Licensing Division (ESLD). These new divisions have the responsibilities and authorities for the analysis and functions that were housed within the Satellite Division of the International Bureau, including its branches, the Policy Branch, the Engineering Branch, and the System Analysis Branch. ESLD is responsible for the technical analysis, review, and

licensing of applications and special temporary requests for satellite earth stations. SLD is responsible for the engineering review of satellite systems applications, and for registering FCC-licensed satellite systems with the ITU. SPPD develops and administers rules, regulations, and policies to support a competitive and innovative space-based global telecommunications marketplace. Our Human Resources Management office has provided data identifying 54 FTEs in the Space Bureau to be counted for FY 2024. The Space Bureau anticipates that 48 of these FTEs will be categorized as direct FTEs, with the exception of six FTEs that work exclusively, or nearly exclusively, on matters that do not provide oversight and regulation of a specific category of regulatory fee payors. A number of space related activities indirectly benefit the existing fee categories, including space stations, commercial mobile services, and earth stations. For example, the Space Bureau coordinates with the National Aeronautics and Space Administration (NASA), Federal Aviation Administration (FAA), National Oceanic and Atmospheric Administration (NOAA), State Department on space sustainability, planetary protections, and on space innovation. Staff in ESLD, SLD, and SPPD assist the Office of Engineering & Technology in reviewing applications for experimental licenses for space-based activities. Lastly, the Space Bureau works closely with GSN staff in the Office of International Affairs to help cover certain ITU World Radiocommunications Conference (WRC) agenda items. These six Space Bureau FTEs would therefore be considered indirect.

44. Of these six indirect FTEs, three FTEs work with the staff of the Office of International Affairs on covering ITU World Radiocommunications Conference (WRC) agenda items, and three FTEs work with the staff of the Office of Engineering & Technology on experimental licenses involving space or earth stations. Thus, we conclude that such FTEs are indirect since such work does not focus on the oversight and regulation of a specific category of regulatory fee payors, but instead benefits the Commission, the telecommunications industry, or the public as a whole, or in the case of work done on experimental licenses, is in furtherance of licenses that are not subject to a regulatory fee.

45. In addition to the 48 direct FTEs out of the 54 FTEs identified by our Human Resources Office, as indicated above, we also propose to reallocate one FTE from OEA and two FTEs from

PSHSB as direct to the Space Bureau for regulatory fee purposes. We therefore conclude, for regulatory fee purposes for FY 2024, there are a total of 54 FTEs within the Space Bureau, 48 direct FTEs and six indirect FTEs, and three indirect FTEs that are designated as direct for a total of 51 direct FTEs and six indirect FTEs. We recognize that the increase in number of direct FTEs allocated to the Space Bureau will directly result in a significant increase in regulatory fees for Space Bureau regulatory fee payors between FY 2023 and FY 2024. This is true even though the amount of appropriated S&E for FY 2024 remains the same as for FY 2023 due to the significant increase in the number of direct FTEs attributed to the Space Bureau. We seek comment on this conclusion.

C. Broadcast Television Stations

46. In the *FY 2020 Report and Order*, we completed the transition to a population-based full-service broadcast television regulatory fee. The population-based methodology conforms with the service authorized here—broadcasting television to the American people. For FY 2024, we propose to continue to assess fees for full-power broadcast television stations based on the population covered by a full-service broadcast television station's contour. Currently, we use 2010 U.S. Census data to assess fees for full-power broadcast television stations. In FY 2024, we will use the results of the 2020 U.S. Census. As a result, there will be no need to make any population adjustments to account for reductions in the population since 2010. However, the Commission will continue to base assessments on limiting the population count of full-power television stations that rely on satellite television stations to reach terrain-limited areas. We seek comment on our mechanism, described below, for how we will calculate the regulatory fee based on the previously decided population-based methodology. We propose adopting a factor of \$.006598 per population served for FY 2024 full-power broadcast television station fees. The population data for broadcasters' service areas are determined using the TVStudy software and the LMS database, based on a station's projected noise-limited service contour. The population data for each licensee and the population-based fee (population multiplied by \$.006598 for each full-power broadcast television station is listed in Table 8. We seek comment on these proposed fees.

D. Digital Equity and Inclusion

47. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals for collecting regulatory fees for FY 2024 may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority. We note that diversity and equity considerations, however, do not allow the Commission to shift fees from one party of fee payors to another nor to fees under section 9 of the Act for any purpose other than as an offsetting collection in the amount of our annual S&E appropriation.

E. Temporary Relief Measures Due to Economic Effects of COVID-19 Pandemic

48. During the COVID-19 pandemic and through FY 2023, the Commission provided certain temporary relief to regulatory fee payors experiencing financial hardship caused or exacerbated by the COVID-19 pandemic through a combination of partial rule waivers and direction to the Office of the Managing Director in exercising its delegated authority. As we explain below, we do not plan to implement these temporary measures for FY 2024. The circumstances for which the measures were temporarily implemented have changed. The National Emergency COVID-19 pandemic has ended and the national economy is rebounding. We seek comment on the following proposals.

49. For FY 2023, the Commission directed the Office of the Managing Director to continue to exercise its delegated authority to partially waive section 1.1910 of the Commission's rules to allow regulatees on "red light" and experiencing financial hardship to nonetheless request waiver, reduction, deferral, and/or installment payment of their FY 2023 regulatory fees, provided that those regulatees resolve all of the delinquent debt they owe to the Commission in advance of the Commission's decision on their relief requests. For fiscal year 2024, we do not intend to direct the Office of the Managing Director to exercise its

discretion in this manner in this proceeding. This means that absent grant of individual requests for waiver of section 1.1910 of our rules, the Commission would not act on a request for waiver, reduction and/or deferral of a regulatory fee filed by a fee payor on red light until full payment of the fee payor's delinquent debt and that the Commission would dismiss the request if the debt was not paid in full within 30 days of the filing of the request.

50. During FY 2023 the Commission also directed OMD to offer a nominal interest rate and waive its down payment requirement for installment payment of regulatory fee debt. For FY 2024, the Commission does not intend to direct Office of the Managing Director to fix the interest rate charged on installment debt at a nominal rate or to waive the requirement that regulatory fee debtors seeking installment payment relief make a downpayment. That means that the Office of the Managing Director will have authority to, but will not be required to, assess a minimum interest rate on regulatory fee installment debt, and will have authority to assess a higher rate of interest if it determines that a higher rate of interest is necessary to protect the interests of the United States. In addition, the Office of the Managing Director will have authority to require a down payment from a regulatory fee payor seeking installment payment relief.

51. During FY 2023, the Commission partially waived section 1.1166 of our rules to permit fee payors seeking waiver, reduction and/or deferral of their FY 2023 regulatory fees based on financial hardship to submit financial documentation supporting their requests after their underlying requests are submitted, but the Commission modified the waiver to permit only one post-filing submission of supplemental financial documents by a deadline of January 31, 2023. This was a change from FY 2022, in that we limited our rule waiver to more closely align it with the requirements of section 1.1166, anticipating a return to the normal operation of section 1.1166. For fiscal year 2024, we do not intend to direct OMD to waive any aspect of this rule in this proceeding. Absent individual waiver requests being granted, this means that parties seeking waiver, reduction and/or deferral relief to submit with their requests all such financial documentation necessary to justify the relief sought on financial hardship grounds. Documents submitted after a request is filed would not be considered, and failure to submit any supporting financial documentation

with a request would result in dismissal and/or denial of the request.

52. We recognize that some regulatory fee payors may be experiencing lingering or continuing financial difficulties related to the pandemic's economic effects, but we believe that sections 1.1166 and 1.1914 of our rules, now streamlined and simplified, offer those fee payors a straightforward path to regulatory fee relief. Commenters that disagree with our proposals should explain why any continued relief based on the COVID-19 pandemic is necessary or justified, and to the extent continuation of any measure requires waiver of a Commission's rule, commenters should explain why good cause exists for, and the public interest would be served by, waiver or modification of the relevant rule.

F. Non-Operating Broadcast Stations

53. We seek comment on ending a policy of presuming that dark or silent stations have experienced financial hardship and therefore merit grant of a request for waiver of regulatory fees on the basis of financial hardship, without requiring submission of evidence of actual financial hardship. This policy was first mentioned by the Commission in 1995, observing that when a broadcast station is dark, it is "generally based on financial hardship." The Commission then concluded that "it is unnecessary to require a licensee to make a further showing of financial hardship" when requesting a waiver of regulatory fees. In articulating this policy in 1995, the Commission assumed that most stations go dark because of financial hardship and observed that "broadcast stations which are dark must request permission to suspend operation" under FCC rules. In 1996, the Commission's Office of the Managing Director applied the presumption to regulatory fees assessed in the first year of a station's operation by a licensee that purchased a recently dark or bankrupt station.

54. The Commission has never codified this policy and it is rarely used. The policy, moreover, appears to assume that the only rationale for a dark or silent station is financial duress. There is no such limitation, however, contained in section 73.1740(a)(4) of our rules. Licensees might go dark for different reasons depending on each station's particular circumstances. Thus, drawing on the Commission's experience since establishment of the policy in 1995, the assumption that requiring financial information in a request for waiver of regulatory fees is unnecessary by the operators of a dark

or silent station appears to be no longer accurate in 2024.

55. In considering whether a licensee is experiencing financial hardship sufficient to justify a waiver under section 1.1166 of our rules, the Commission considers the financial circumstances of the licensee, including all of its assets and revenue streams. In the case of a licensee with multiple stations, the silence of one of its stations does not automatically mean that the licensee's overall financial circumstances are such that it cannot pay its stations' regulatory fees and continue operating its remaining stations. Similarly, it is not always the case that a newly purchased station that was previously dark or bankrupt is insufficiently funded in its first year of operations such that its regulatory fees cannot be paid. A new station owner may have other revenue sources, including from its other stations it operates, or financing for the new station's start-up costs. In other words, while a station's silence or reduced operation may be the result of, or may cause financial hardship, we tentatively conclude that the question of whether that is in fact the case is more appropriately determined on a case-by-case basis.

56. For these reasons, we propose to end the assumption that stations are dark or were recently dark or bankrupt are experiencing financial distress when they file a request for waiver of regulatory fees. We propose instead to require these licensees to submit supporting financial documentation with their fee requests to prove financial hardship sufficient to justify a fee waiver, just as all other regulatory fee payors are required to do under section 1.1166 of our rules. In order to give regulatory fee payors more time to make any necessary changes to comply with this change in policy, we propose to make the change effective for fiscal year 2025. We seek comment on this proposal.

G. Improving the Regulatory Fee Process

57. We have a statutory obligation to assess and collect regulatory fees each fiscal year to meet the Commission's S&E appropriation. At the same time, we are committed to ensuring that the regulatory fee process is administratively manageable and reasonably predictable for both the Commission and regulatory fee payors. We therefore seek comment on ways in which the Commission might improve the regulatory fee process to ensure that regulatory fee payors can timely meet their annual regulatory fee obligations. We ask that commenters explain the

legal bases for any proposals they make and how such proposals fit within the Commission's statutory authorizations and our existing regulatory fee methodology.

58. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

H. New Regulatory Fee Categories

59. Finally, we continue to seek additional comment on "whether we should adopt new regulatory fee categories and on ways to improve our regulatory fee process regarding any and all categories of service." We invite additional comment in order to help inform our consideration of these issues.

V. Procedural Matters

60. Included below are procedural items as well as our current payment and collection methods. We include these payments and collection procedures here as a useful way of reminding regulatory fee payors and the public about these aspects of the annual regulatory fee collection process.

61. *Credit Card Transaction Levels.* In accordance with *Treasury Financial Manual*, Volume I, Part 5, Chapter 7000, section 7065.20a—*Credit Card Collections*, the total daily credit card transactions processed from a single customer can be no more than \$24,999.99 (hereinafter the "Maximum Daily Limit") and the total monthly transactions processed from a single customer (based on a rolling 30-day period) can be no more than \$100,000.00 (hereinafter the "Maximum Monthly Limit"). Transactions greater than the Maximum Daily Limit will be rejected. If a customer initiates multiple transactions on the same day with the same credit card, those transactions causing the total charge to exceed the Maximum Daily Limit will also be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the \$24,999.99 limit. Customers who wish to pay an amount greater than \$24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, Automates Clearing House (ACH) debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in CORES. Further details will be provided regarding payment methods and

procedures at the time of FY 2024 regulatory fee collection in Fact Sheets, <https://www.fcc.gov/regfees>.

62. *Payment Methods.* During the fee season for collecting regulatory fees, regulatees can pay their fees by credit card through *Pay.gov*, ACH, debit card, or by wire transfer. Additional payment instructions are posted on the Commission's website at <https://www.fcc.gov/licensing-databases/fees/wire-transfer>. The receiving bank for all wire payments is the U.S. Treasury, New York, NY (TREAS NYC). Any other form of payment (e.g., checks, cashier's checks, or money orders) will be rejected. For payments by wire, an FCC Form 159-E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. The fax should be sent to the Commission at (202) 418-2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

63. *Standard Fee Calculations and Payment Dates.* The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2023 for AM/FM radio stations, VHF/UHF broadcast television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2023.

- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2023. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category. For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in section 52.103 of the

Commission's rules. The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2023.

- *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2023. The number of subscribers, units, or telephone numbers on December 31, 2023 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date.

- *Wireless Services, Multi-year fees:* The first eight regulatory fee categories in our Schedule of Regulatory Fees (first seven in our Calculation of Fees in Table 4) pay "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed, or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of "small multi-year wireless" licenses that will be renewed or newly obtained in FY 2024.

- *Multichannel Video Programming Distributor (MVPD) Services (cable television operators, Cable Television Relay Service (CARS) licensees, DBS, and IPTV):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2023. Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2023. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2023. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date.

- *International Services:* Regulatory fees must be paid for earth stations that were licensed (or authorized) on or before October 1, 2023. Regulatory fees must also be paid for Geostationary orbit space stations (GSO) and non-geostationary orbit satellite systems (NGSO), and the two NGSO

subcategories "Other" and "Less Complex," that were licensed and operational on or before October 1, 2023. Licensees of small satellites that were licensed and operational on or before October 1, 2023 must also pay regulatory fees. Proposals have also been made to assess regulatory fees on all space stations that are authorized only (earth stations are feeable when they become licensed or authorized). Proposals have also been made to adopt regulatory fees for Rendezvous and Proximity Operations (RPO), On-Orbit Servicing (OOS), and Orbital Transfer Vehicles (OTV). In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date.

- *International Services (Submarine Cable Systems, Terrestrial and Satellite Services):* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on lit circuit capacity as of December 31, 2023. Regulatory fees for terrestrial and satellite IBCs are to be paid based on active (used or leased) international bearer circuits as of December 31, 2023, in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, entities must include circuits used by themselves or their affiliates. For these purposes, "active circuits" include backup and redundant circuits as of December 31, 2023. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date.

64. *CMRS and Mobile Services Assessments.* The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on "assigned" telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports ("in" and "out"). We have included non-geographic numbers in the calculation of the number of subscribers for each CMRS provider in Table 3 and the CMRS regulatory fee factor proposed in Table 4. CMRS provider regulatory fees will be calculated and should be paid based on the inclusion of non-geographic numbers. CMRS providers can adjust the total number of subscribers, if needed. This information of telephone numbers (subscriber count) will be

posted on the Commission's Registration System (CORES) along with the carrier's Operating Company Numbers (OCNs).

65. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing CORES and following the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation. The Commission will then review the revised count and supporting explanation, if any, and either approve or disapprove the submission in CORES. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide supporting documentation. If the Commission receives no response from the provider, or the Commission does not reverse its initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers

listed initially in CORES. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in CORES.

66. Because some carriers do not file the NRUF report, they may not see their telephone number counts in CORES. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.*, compute their telephone number counts as of December 31, 2024), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in CORES or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the

difference between what was paid and what should have been paid.

67. *Regulatory Flexibility Act.* The RFA requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, we have prepared an IRFA concerning the potential impact of rule and policy change proposals on small entities in the NPRM. The IRFA is set forth in the back of this rulemaking. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the NPRM indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

List of Tables

TABLE 3—CALCULATION OF FY 2024 REVENUE REQUIREMENTS AND PRO-RATA FEES

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee category	FY 2024 payment units	Yrs	FY 2023 revenue estimate	Pro-Rated FY 2024 revenue requirement	Computed FY 2024 regulatory fee	Rounded FY 2024 reg. fee	Expected FY 2024 revenue
PLMRS (Exclusive Use)	1,150	10	300,000	287,500	25.00	25	287,500
PLMRS (Shared use)	23,300	10	1,900,000	2,330,000	10.00	10	2,330,000
Microwave	16,500	10	4,000,000	4,125,000	25.00	25	4,125,000
Marine (Ship)	7,000	10	1,050,000	1,050,000	15.00	15	1,050,000
Aviation (Aircraft)	5,800	10	480,000	580,000	10.00	10	580,000
Marine (Coast)	280	10	96,000	112,000	40.00	40	112,000
Aviation (Ground)	270	10	60,000	54,000	20.00	20	54,000
AM Class A ¹	58	1	286,800	266,175	4,589	4,590	266,220
AM Class B ¹	1,305	1	3,556,605	3,302,737	2,531	2,530	3,301,650
AM Class C ¹	784	1	1,273,910	1,182,590	1,508	1,510	1,183,840
AM Class D ¹	1,325	1	4,208,245	3,906,677	2,948	2,950	3,908,750
FM Classes A, B1 & C3 ¹	3,021	1	8,885,560	8,238,364	2,727	2,725	8,232,225
FM Classes B, C, C0, C1 & C2 ¹	3,064	1	10,872,945	10,087,736	3,292	3,290	10,080,560
AM Construction Permits ²	2	1	3,100	1,170	585	585	1,170
FM Construction Permits ²	14	1	17,360	14,350	1,025	1,025	14,350
Digital Television ⁵							
(including Satellite TV)	3.541 billion population	1	25,463,735	23,365,758	.0065978	.006598	23,363,518
Digital TV Construction Permits ²	5	1	20,400	26,000	5,200	5,200	26,000
LPTV/Class A/Translators FM Trans/Boosters	6,215	1	1,644,500	1,512,193	243.3	245	1,522,675
CARS Stations	105	1	206,400	190,963	1,818.7	1,820	191,100
Cable TV Systems, including IPTV & DBS	50,000,000	1	68,880,000	63,437,881	1.2688	1.27	63,500,000
Interstate Telecommunication Service Providers	\$22,100,000,000	1	135,540,000	122,486,646	0.005542	0.005540	122,434,000
Toll Free Numbers	35,000,000	1	4,511,000	4,208,697	0.12025	0.12	4,200,000
CMRS Mobile Services (Cellular/Public Mobile)	562,000,000	1	88,480,000	90,320,215	0.1607	0.16	89,920,000
CMRS Messaging Services	600,000	1	104,000	48,000	0.0800	0.080	48,000
BRS/ ³	1,200	1	836,500	870,000	725	725	870,000
LMDS	370	1	252,000	268,250	725	725	268,250
Per Gbps circuit Int'l Bearer Circuits Terrestrial (Common & Non-Common) & Satellite (Common & Non-Common)	20,000	1	442,000	329,712	16.5	17	340,000
Submarine Cable Providers (See chart at bottom of Table 4) ⁴	71.56	1	8,228,605	6,264,533	87,542	87,540	6,264,362
Earth Stations	2,900	1	1,667,500	3,244,837	1,119	1,120	3,248,000
Space Stations (Geostationary)	134	1	15,990,880	31,112,505	232,183	232,185	31,112,790
Space Stations (Non-Geostationary, Other)	8	1	3,129,795	5,975,115	746,889	746,890	5,975,120
Space Stations (Non-Geostationary, Less Complex)	6	1	782,430	1,496,939	249,490	249,490	1,496,940
Space Stations (Non-Geostationary, Small Satellite)	12	1	85,505	311,340	25,945	25,945	311,340
***** Total Estimated Revenue to be Collected			392,991,324	389,916,319			390,621,601

TABLE 3—CALCULATION OF FY 2024 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee category	FY 2024 payment units	Yrs	FY 2023 revenue estimate	Pro-Rated FY 2024 revenue requirement	Computed FY 2024 regulatory fee	Rounded FY 2024 reg. fee	Expected FY 2024 revenue
***** Total Revenue Requirement			390,192,000	390,192,000	.....	.....	390,192,000
Difference			2,799,324	(275,681)	.....	.....	429,601

Notes on Table 3:

¹ The fee amounts listed in the column entitled "Rounded New FY 2024 Regulatory Fee" constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2024 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 4.

² The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service based on the threshold 10,001–25,000, the traditional basis for identifying the lowest licensed fee. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

³ The MDS/MMDS category was renamed Broadband Radio Service (BRS). See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands*, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

⁴ The chart at the end of Table 4 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 (2009). The Submarine Cable fee in Table A is a weighted average of the various fee payers in the chart at the end of Table 3.

⁵ The actual digital television regulatory fees to be paid by call sign are identified in Table 8.

TABLE 4—FY 2024 SCHEDULE OF REGULATORY FEES

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee category	Annual regulatory fee (U.S. \$s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers)	.16
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	725
Distribution Service (per call sign) (47 CFR, part 101)	725
Local Multipoint	725
AM Radio Construction Permits	585
FM Radio Construction Permits	1,025
AM and FM Broadcast Radio Station Fees	See Table Below
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	\$.006598
See Table 8 for fee amounts due, also available at https://www.fcc.gov/licensing-databases/fees/regulatory-fees	
Digital TV Construction Permits	5,200
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	245
CARS (47 CFR part 78)	1,820
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS)	1.27
Interstate Telecommunication Service Providers (per revenue dollar)	.00554
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.12
Earth Stations (47 CFR part 25)	1,120
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	232,185
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	746,890
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	249,945
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	25,945
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	\$17
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2024 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤10,000	\$560	\$405	\$350	\$385	\$615	\$700

FY 2024 RADIO STATION REGULATORY FEES—Continued

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
10,001–25,000	935	675	585	645	1,025	1,170
25,001–75,000	1,405	1,015	880	970	1,540	1,755
75,001–150,000	2,105	1,520	1,315	1,450	2,305	2,635
150,001–500,000	3,160	2,280	1,975	2,180	3,465	3,955
500,001–1,200,000	4,730	3,415	2,960	3,265	5,185	5,920
1,200,001–3,000,000	7,105	5,130	4,445	4,900	7,790	8,890
3,000,001–6,000,000	10,650	7,690	6,665	7,345	11,675	13,325
>6,000,000	15,980	11,535	10,000	11,025	17,515	19,995

FY 2024 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2023)	Fee ratio (units)	FY 2024 regulatory fees
Less than 50 Gbps	.0625	\$5,475
50 Gbps or greater, but less than 250 Gbps	.125	10,945
250 Gbps or greater, but less than 1,500 Gbps	.25	21,885
1,500 Gbps or greater, but less than 3,500 Gbps	.5	43,770
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	87,540
6,500 Gbps or greater	2.0	175,080

Table 5—Sources of Payment Unit Estimates for FY 2024

In order to calculate individual service fees for FY 2024, we adjusted FY 2023 payment units for each service to more accurately reflect expected FY 2024 payment liabilities. We obtained our updated estimates through a variety of means and sources. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections, where available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Licensing and Management System (LMS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*. Regulatory fee payment units are not all the same for all fee categories. For most fee categories, the term “units” reflect licenses or permits that have been issued, but for other fee categories,

the term “units” reflect quantities such as subscribers, population counts, circuit counts, telephone numbers, and revenues. As more current data is received after the *Notice of Proposed Rulemaking (NPRM)* is released, the Commission sometimes adjusts the NPRM fee rates to reflect the new information in the *Report and Order*. This is intended to make sure that the fee rates in the *Report and Order* reflect more recent and accurate information. We realize that by adjusting the unit counts as more accurate information is received may adjust the fee rates for certain regulatory fee categories. Certain entities that collect the fees from customers in advance in order to pay the Commission, such as Cable and DBS companies, ITSP providers, Cell Phone and Toll-Free providers, to name a few, may need to adjust their billings to customers as the Commission adjusts its fee rates. As a result, the Commission understands that these adjustments are necessary so that these regulatees can recover their fee obligations from their customers.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2024 estimates with actual FY 2023 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2024 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2024 payment units are based on FY 2023 actual payment units, it does not necessarily mean that our FY 2024 projection is exactly the same number as in FY 2023. We have either rounded the FY 2024 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) information as well as prior year payment information. Estimates have been adjusted to take into consideration the licensing of portions of these services.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 2023 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2023 payment data.
AM/FM Radio Stations	Based on downloaded LMS data, adjusted for exemptions, and actual FY 2023 payment units.
Digital TV Stations (Combined VHF/UHF units)	Based on LMS data, fee rate adjusted for exemptions, and population figures are calculated based on individual station parameters.
AM/FM/TV Construction Permits	Based on LMS data, adjusted for exemptions, and actual FY 2023 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on LMS data, adjusted for exemptions, and actual FY 2023 payment units.
BRS (formerly MDS/MMDS)LMDS	Based on WTB reports and actual FY 2023 payment units. Based on WTB reports and actual FY 2023 payment units.

Fee category	Sources of payment unit estimates
Cable Television Relay Service (CARS) Stations.	Based on cable trend data, data from the Media Bureau's COALS database, and actual FY 2023 payment units.
Cable Television System Subscribers, Including IPTV Subscribers.	Based on publicly available data sources for estimated subscriber counts, trend information from past payment data, and actual FY 2023 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499-A worksheets due in April 2024, and any data assistance provided by the Wireline Competition Bureau.
Earth Stations	Based on International Bureau licensing data and actual FY 2023 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau data reports and actual FY 2023 payment units.
International Bearer Circuits	Based on assistance provided by the International Bureau, any data submissions by licensees, adjusted as necessary, and actual FY 2023 payment units.
Submarine Cable Licenses	Based on International Bureau license information, and actual FY 2023 payment units.

Table 6—Factors, Measurements, and Calculations That Determine Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated

horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2020 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360

radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2020 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

Table 7—Space Station Satellite Charts for FY 2024 Regulatory Fees

Listing of Satellites Under Existing Methodology

SPACE STATIONS (GEOSTATIONARY ORBIT): U.S.-LICENSED SPACE STATIONS

Licensee	Call sign	Satellite name	Type
Astranis Projects USA LLC	S3092	ARCTURUS	GSO
Open Plaza Corp	S2922	SKY-B1	GSO
DIRECTV Enterprises, LLC	S2640	DIRECTV T11	GSO
DIRECTV Enterprises, LLC	S2711	DIRECTV RB-1	GSO
DIRECTV Enterprises, LLC	S2632	DIRECTV T8	GSO
DIRECTV Enterprises, LLC	S2669	DIRECTV T9S	GSO
DIRECTV Enterprises, LLC	S2641	DIRECTV T10	GSO
DIRECTV Enterprises, LLC	S2797	DIRECTV T12	GSO
DIRECTV Enterprises, LLC	S2930	DIRECTV T15	GSO
DIRECTV Enterprises, LLC	S2673	DIRECTV T5	GSO
DIRECTV Enterprises, LLC	S2133	SPACEWAY 2	GSO
DIRECTV Enterprises, LLC	S3039	DIRECTV T16	GSO
DISH Operating L.L.C.	S2931	ECHOSTAR 18	GSO
DISH Operating L.L.C.	S2738	ECHOSTAR 11	GSO
DISH Operating L.L.C.	S2694	ECHOSTAR 10	GSO
DISH Operating L.L.C.	S2740	ECHOSTAR 7	GSO
DISH Operating L.L.C.	S2790	ECHOSTAR 14	GSO
EchoStar Satellite Operating Corporation	S2811	ECHOSTAR 15	GSO
EchoStar Satellite Operating Corporation	S2844	ECHOSTAR 16	GSO
EchoStar Satellite Services L.L.C.	S2179	ECHOSTAR 9	GSO
ES 172 LLC	S2610	EUTELSAT 174A	GSO
ES 172 LLC	S3021	EUTELSAT 172B	GSO
Horizon-3 Satellite LLC	S2947	HORIZONS-3e	GSO

SPACE STATIONS (GEOSTATIONARY ORBIT): U.S.-LICENSED SPACE STATIONS—Continued

Licensee	Call sign	Satellite name	Type
Hughes Network Systems, LLC	S2663	SPACEWAY 3	GSO
Hughes Network Systems, LLC	S2834	ECHOSTAR 19	GSO
Hughes Network Systems, LLC	S2753	ECHOSTAR XVII	GSO
Intelsat License LLC/ViaSat, Inc	S2160	GALAXY 28	GSO
Intelsat License LLC	S2414	INTELSAT 10-02	GSO
Intelsat License LLC	S2972	INTELSAT 37e	GSO
Intelsat License LLC	S2854	NSS-7	GSO
Intelsat License LLC	S2409	INELSAT 905	GSO
Intelsat License LLC	S2405	INTELSAT 901	GSO
Intelsat License LLC	S2408	INTELSAT 904	GSO
Intelsat License LLC	S2804	INTELSAT 25	GSO
Intelsat License LLC	S2959	INTELSAT 35e	GSO
Intelsat License LLC	S2237	INTELSAT 11	GSO
Intelsat License LLC	S2785	INTELSAT 14	GSO
Intelsat License LLC	S2380	INTELSAT 9	GSO
Intelsat License LLC	S2831	INTELSAT 23	GSO
Intelsat License LLC	S2915	INTELSAT 34	GSO
Intelsat License LLC	S2863	INTELSAT 21	GSO
Intelsat License LLC	S2750	INTELSAT 16	GSO
Intelsat License LLC	S2715	GALAXY 17	GSO
Intelsat License LLC	S2154	GALAXY 25	GSO
Intelsat License LLC	S2253	GALAXY 11	GSO
Intelsat License LLC	S2381	GALAXY 3C	GSO
Intelsat License LLC	S2887	INTELSAT 30	GSO
Intelsat License LLC	S2924	INTELSAT 31	GSO
Intelsat License LLC	S2647	GALAXY 19	GSO
Intelsat License LLC	S2687	GALAXY 16	GSO
Intelsat License LLC	S2733	GALAXY 18	GSO
Intelsat License LLC	S2385	GALAXY 14	GSO
Intelsat License LLC	S2386	GALAXY 13	GSO
Intelsat License LLC	S2422	GALAXY 12	GSO
Intelsat License LLC	S2387	GALAXY 15	GSO
Intelsat License LLC	S3016	GALAXY 30	GSO
Intelsat License LLC	S3078	GALAXY 32	GSO
Intelsat License LLC	S3148	GALAXY 36	GSO
Intelsat License LLC	S2704	INTELSAT 5	GSO
Intelsat License LLC	S2817	INTELSAT 18	GSO
Intelsat License LLC	S2850	INTELSAT 19	GSO
Intelsat License LLC	S2368	INTELSAT 1R	GSO
Intelsat License LLC	S2789	INTELSAT 15	GSO
Intelsat License LLC	S2423	HORIZONS 2	GSO
Intelsat License LLC	S2846	INTELSAT 22	GSO
Intelsat License LLC	S2847	INTELSAT 20	GSO
Intelsat License LLC	S2948	INTELSAT 36	GSO
Intelsat License LLC	S2814	INTELSAT 17	GSO
Intelsat License LLC	S2410	INTELSAT 906	GSO
Intelsat License LLC	S2406	INTELSAT 902	GSO
Intelsat License LLC	S2939	INTELSAT 33e	GSO
Intelsat License LLC	S2382	INTELSAT 10	GSO
Intelsat License LLC	S2751	INTELSAT 28	GSO
Intelsat License LLC	S3023	INTELSAT 39	GSO
Intelsat License LLC	S3066	INTELSAT 40e	GSO
Ligado Networks Subsidiary, LLC	S2358	SKYTERRA-1	GSO
Ligado Networks Subsidiary, LLC	AMSC-1	MSAT-2	GSO
Novavision Group, Inc	S2861	DIRECTV KU-79W	GSO
Satellite CD Radio LLC	S2812	FM-6	GSO
SES Americom, Inc	S2415	NSS-10	GSO
SES Americom, Inc	S2162	AMC-3	GSO
SES Americom, Inc	S2347	AMC-6	GSO
SES Americom, Inc	S2826	SES-2	GSO
SES Americom, Inc	S2807	SES-1	GSO
SES Americom, Inc	S2180	AMC-15	GSO
SES Americom, Inc	S2713	AMC-18	GSO
SES Americom, Inc	S3097	SES-19	GSO
SES Americom, Inc	S3099	SES-21	GSO
Silkwave Africa, LLC	S3074	AsiaStar	GSO
Sirius XM Radio Inc	S2710	FM-5	GSO
Sirius XM Radio Inc	S3034	XM-8	GSO
Skynet Satellite Corp	S2933	TELSTAR 12V	GSO
Skynet Satellite Corporation	S2357	TELSTAR 11N	GSO
ViaSat, Inc	S2747	VIASAT-1	GSO
ViaSat, Inc	S2917	VIASAT-3	GSO

SPACE STATIONS (GEOSTATIONARY ORBIT): U.S.-LICENSED SPACE STATIONS—Continued

Licensee	Call sign	Satellite name	Type
XM Radio LLC	S2786	XM-5	GSO

SPACE STATIONS (GEOSTATIONARY ORBIT): NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING

Licensee	Call sign	Satellite name	Type
ABS Global Ltd	S2987	ABS-3A	GSO
Avanti Hylas 2 Ltd	S3130	HYLAS-4	GSO
DBSD Services Ltd	S2651	DBSD G1	GSO
Embratel TVSAT Telecomunicacoes S.A	S3142	Star One D2	GSO
Empresa Argentina de Soluciones Satelitales S.A	S2956	ARSAT-2	GSO
Eutelsat S.A	S3056	EUTELSAT 8 WEST B	GSO
Eutelsat S.A	S3055	EUTELSAT 139 WEST A	GSO
Gamma Acquisition L.L.C	S2633	TerreStar 1	GSO
Hispamar Satélites, S.A	S2793	AMAZONAS-2	GSO
Hispamar Satélites, S.A	S2886	AMAZONAS-3	GSO
Hispamar Satélites, S.A	S3086	AMAZONAS NEXUS	GSO
Hispasat, S.A.	S2969	HISPASAT 30W-6	GSO
Inmarsat PLC	S2932	Inmarsat-4 F3	GSO
Inmarsat PLC	S2949	Inmarsat-3 F5	GSO
New Skies Satellites B.V	S2756	NSS-9	GSO
New Skies Satellites B.V	S2870	SES-6	GSO
New Skies Satellites B.V	S3048	NSS-6	GSO
New Skies Satellites B.V	S2828	SES-4	GSO
New Skies Satellites B.V	S2950	SES-10	GSO
Satelites Mexicanos, S.A. de C.V	S2695	EUTELSAT 113 WEST A	GSO
Satelites Mexicanos, S.A. de C.V	S2926	EUTELSAT 117 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2938	EUTELSAT 115 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2873	EUTELSAT 117 WEST A	GSO
SES Satellites (Gibraltar) Ltd	S2676	AMC 21	GSO
SES Americom, Inc	S3037	NSS-11	GSO
SES Americom, Inc	S2964	SES-11	GSO
SES DTH do Brasil Ltda	S2974	SES-14	GSO
Telesat Canada	S2745	ANIK F1	GSO
Telesat Canada	S2674	ANIK F1R	GSO
Telesat Canada	S2703	ANIK F3	GSO
Telesat Canada	S2472	ANIK F2	GSO
Telesat International Ltd	S2955	TELSTAR 19 VANTAGE	GSO
Viasat, Inc	S2902	VIASAT-2	GSO

SPACE STATIONS (GEOSTATIONARY ORBIT): NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH EARTH STATION LICENSES

Licensee	Call sign	Satellite name	Type
APSTAR VI	APSTAR 6	M292090	GSO
AUSSAT B 152E	OPTUS D2	M221170	GSO
Ciel Satellite Group	Ciel-2	E050029	GSO
Eutelsat 65 West A	Eutelsat 65 West A	E160081	GSO
INMARSAT 4F1	INMARSAT 4F1	KA25	GSO
INMARSAT 5F2	INMARSAT 5F2	E120072	GSO
INMARSAT 5F3	INMARSAT 5F3	E150028	GSO
JCSAT-2B	JCSAT-2B	M174163	GSO
NIMIQ 5	NIMIQ 5	E080107	GSO
WILDBLUE-1	WILDBLUE-1	E040213	GSO

SPACE STATIONS (PER LICENSE/CALL SIGN IN NON-GEOSTATIONARY ORBIT)
(Small Satellite)

ITU name (if available)	Common name	Call sign	Type
Capella Space Corp	Capella-2, Capella-3, Capella-4	S3073	Small Satellite.
Capella Space Corp	Capella-5, Capella-6	S3080	Small Satellite.
Capella Space Corp	Capella-7, Capella-8	S3100	Small Satellite.
Capella Space Corp	Acadia-1	S3162	Small Satellite.
Launcher, Inc	Orbiter SN3	S3161	Small Satellite.
Loft Orbital Solutions Inc	YAM-3	S3072	Small Satellite.

SPACE STATIONS (PER LICENSE/CALL SIGN IN NON-GEOSTATIONARY ORBIT)—Continued
(Small Satellite)

ITU name (if available)	Common name	Call sign	Type
Loft Orbital Solutions Inc	YAM-5	S3147	Small Satellite.
Turion Space Corp	DROID.001	S3146	Small Satellite.
R2 Space, Inc	XR-1	S3067	Small Satellite.
ICEYE US, Inc	ICEYE	S3082	Small Satellite.
Umbra Lab Inc	Umbra SAR	S3095	Small Satellite.
ICEYE US, Inc	ICEYE Second Tranche	S3165	Small Satellite.

SPACE STATIONS (NON-GEOSTATIONARY ORBIT)—LESS COMPLEX

ITU name (if available)	Common name	Call sign	Type
Planet Labs	Flock/Skysats	S2912	Less Complex.
Maxar License	WorldView 1, 2 & 3, GeoEye-1	S2129/S2348	Less Complex.
BlackSky Global	Global	S3032	Less Complex.
Orbital Sidekick, Inc	GHOST	S3139	Less Complex.
Hawkeye 360	HE360	S3042	Less Complex.
Spire Global	LEMUR & MINAS	S2946/S3045	Less Complex.

SPACE STATIONS (NON-GEOSTATIONARY ORBIT)—OTHER

ITU name (if available)	Common name	Call sign	Type
ORBCOMM License Corp	ORBCOMM	S2103	Other.
Iridium Constellation LLC	IRIDIUM	S2110	Other.
Telesat Canada	TELESAT Ku/Ka-Band	S2976	Other.
Kepler Communications, Inc	KEPLER	S2981	Other.
O3b Ltd	O3b	S2935	Other.
Globalstar License LLC	GLOBALSTAR	S2115	Other.
Swarm Technologies (Space Exploration Holdings, LLC)	SWARM	S3041	Other.
WorldVu Satellites Ltd	ONEWEB	S2963	Other.

Space Station Satellite Charts for Proposed FY 2024 Regulatory Fees

Table A—Space Stations Potentially Subject to Regulatory Fees in FY 2024

These charts publish a list of space stations and systems that would be subject to regulatory fees in FY 2024, including under the proposal made in the *Space and Earth Station Regulatory*

Fees Notice of Proposed Rulemaking to assess regulatory fees on all authorized space stations, not only operational space stations.

Italicized entries reflect that the space station or system of NGSO space stations are authorized, but not operational for FY 2024, or are collocated with another GSO space station, and thus would be required to

pay regulatory fees for FY 2024 if the proposals made in the *Space and Earth Station Regulatory Fees Notice of Proposed Rulemaking* to amend the existing methodology or under the alternative methodology are adopted, but would not otherwise be required to pay regulatory fees under the existing methodology.

SPACE STATIONS (GEOSTATIONARY ORBIT): U.S.-LICENSED SPACE STATIONS

Licensee	Call sign	Satellite name	Type
Astranis Projects USA LLC	S3092	ARCTURUS	GSO
Open Plaza Corp	S2922	SKY-B1	GSO
DIRECTV Enterprises, LLC	S2640	DIRECTV T11	GSO
DIRECTV Enterprises, LLC	S2711	DIRECTV RB-1	GSO
DIRECTV Enterprises, LLC	S2632	DIRECTV T8	GSO
DIRECTV Enterprises, LLC	S2669	DIRECTV T9S	GSO
DIRECTV Enterprises, LLC	S2641	DIRECTV T10	GSO
DIRECTV Enterprises, LLC	S2797	DIRECTV T12	GSO
DIRECTV Enterprises, LLC	S2930	DIRECTV T15	GSO
DIRECTV Enterprises, LLC	S2673	DIRECTV T5	GSO
DIRECTV Enterprises, LLC	S2133	SPACEWAY 2	GSO
DIRECTV Enterprises, LLC	S3039	DIRECTV T16	GSO
DISH Operating L.L.C	S2931	ECHOSTAR 18	GSO
DISH Operating L.L.C	S2738	ECHOSTAR 11	GSO
DISH Operating L.L.C	S2694/S3093	ECHOSTAR 10/ECHOSTAR 23	GSO
DISH Operating L.L.C	S2740	ECHOSTAR 7	GSO
DISH Operating L.L.C	S2790	ECHOSTAR 14	GSO
EchoStar Satellite Operating Corporation	S2811	ECHOSTAR 15	GSO
EchoStar Satellite Operating Corporation	S2844	ECHOSTAR 16	GSO

SPACE STATIONS (GEOSTATIONARY ORBIT): U.S.-LICENSED SPACE STATIONS—Continued

Licensee	Call sign	Satellite name	Type
EchoStar Satellite Services L.L.C	S2179	EHOSTAR 9	GSO
ES 172 LLC	S2610	EUTELSAT 174A	GSO
ES 172 LLC	S3021	EUTELSAT 172B	GSO
Horizon-3 Satellite LLC	S2947	HORIZONS-3e	GSO
Hughes Network Systems, LLC	S2663	SPACEWAY 3	GSO
Hughes Network Systems, LLC	S2834	EHOSTAR 19	GSO
Hughes Network Systems, LLC	S2753	EHOSTAR XVII	GSO
Hughes Network Systems, LLC	S3017	EchoStar XXIV	GSO
Intelsat License LLC/ViaSat, Inc	S2160	GALAXY 28	GSO
Intelsat License LLC	S2414	INTELSAT 10-02	GSO
Intelsat License LLC	S2972	INTELSAT 37e	GSO
Intelsat License LLC	S2854	NSS-7	GSO
Intelsat License LLC	S2409	INELSAT 905	GSO
Intelsat License LLC	S2405	INTELSAT 901	GSO
Intelsat License LLC	S2408	INTELSAT 904	GSO
Intelsat License LLC	S2804	INTELSAT 25	GSO
Intelsat License LLC	S2959	INTELSAT 35e	GSO
Intelsat License LLC	S2237	INTELSAT 11	GSO
Intelsat License LLC	S2785	INTELSAT 14	GSO
Intelsat License LLC	S2380	INTELSAT 9	GSO
Intelsat License LLC	S2831	INTELSAT 23	GSO
Intelsat License LLC	S2915	INTELSAT 34	GSO
Intelsat License LLC	S2863	INTELSAT 21	GSO
Intelsat License LLC	S2750	INTELSAT 16	GSO
Intelsat License LLC	S2715	GALAXY 17	GSO
Intelsat License LLC	S2154	GALAXY 25	GSO
Intelsat License LLC	S2253	GALAXY 11	GSO
Intelsat License LLC	S2381	GALAXY 3C	GSO
Intelsat License LLC	S2887	INTELSAT 30	GSO
Intelsat License LLC	S2924/S3143	INTELSAT 31/GALAXY 35	GSO
Intelsat License LLC	S2647	GALAXY 19	GSO
Intelsat License LLC	S2687	GALAXY 16	GSO
Intelsat License LLC	S2733	GALAXY 18	GSO
Intelsat License LLC	S2385	GALAXY 14	GSO
Intelsat License LLC	S2386	GALAXY 13	GSO
Intelsat License LLC	S2422/S3083	GALAXY 12/GALAXY 34	GSO
Intelsat License LLC	S2387/S3015	GALAXY 15/GALAXY 33	GSO
Intelsat License LLC	S3016	GALAXY 30	GSO
Intelsat License LLC	S3078	GALAXY 32	GSO
Intelsat License LLC	S3148	GALAXY 36	GSO
Intelsat License LLC	S2704	INTELSAT 5	GSO
Intelsat License LLC	S2817	INTELSAT 18	GSO
Intelsat License LLC	S2850	INTELSAT 19	GSO
Intelsat License LLC	S2368	INTELSAT 1R	GSO
Intelsat License LLC	S2789	INTELSAT 15	GSO
Intelsat License LLC	S2423	HORIZONS 2	GSO
Intelsat License LLC	S2846	INTELSAT 22	GSO
Intelsat License LLC	S2847	INTELSAT 20	GSO
Intelsat License LLC	S2948	INTELSAT 36	GSO
Intelsat License LLC	S2814	INTELSAT 17	GSO
Intelsat License LLC	S2410	INTELSAT 906	GSO
Intelsat License LLC	S2406	INTELSAT 902	GSO
Intelsat License LLC	S2939	INTELSAT 33e	GSO
Intelsat License LLC	S2382	INTELSAT 10	GSO
Intelsat License LLC	S2751	INTELSAT 28	GSO
Intelsat License LLC	S3023	INTELSAT 39	GSO
Intelsat License LLC	S3066	INTELSAT 40e	GSO
Ligado Networks Subsidiary, LLC	S2358	SKYTERRA-1	GSO
Ligado Networks Subsidiary, LLC	AMSC-1	MSAT-2	GSO
Novavision Group, Inc	S2861	DIRECTV KU-79W	GSO
Satellite CD Radio LLC	S2812	FM-6	GSO
SES Americom, Inc	S2415	NSS-10	GSO
SES Americom, Inc	S2162	AMC-3	GSO
SES Americom, Inc	S2347	AMC-6	GSO
SES Americom, Inc	S2826	SES-2	GSO
SES Americom, Inc	S2807	SES-1	GSO
SES Americom, Inc	S2892/S3096/ S3098	SES-3/SES-18/SES-20	GSO
SES Americom, Inc	S2180	AMC-15	GSO
SES Americom, Inc	S2713	AMC-18	GSO
Telesat Canada	S2433	AMC-11	GSO
SES Americom, Inc	S3097/S3138	SES-19/SES-22	GSO

SPACE STATIONS (GEOSTATIONARY ORBIT): U.S.-LICENSED SPACE STATIONS—Continued

Licensee	Call sign	Satellite name	Type
SES Americom, Inc	S3099	SES-21	GSO
Silkwave Africa, LLC	S2666	AfriStar-2	GSO
Silkwave Africa, LLC	S3074	AsiaStar	GSO
Sirius XM Radio Inc	S2710	FM-5	GSO
Sirius XM Radio Inc	S3034/S2617/ S2616/S3033	XM-8/XM-3/XM-4/XM-7	GSO
Skynet Satellite Corporation	S2933	TELSTAR 12V	GSO
Skynet Satellite Corporation	S2357	TELSTAR 11N	GSO
ViaSat, Inc	S2747	VIASAT-1	GSO
ViaSat, Inc	S2917/S3050	VIASAT-3/VIASAT-89US	GSO
XM Radio LLC	S2786	XM-5	GSO

SPACE STATIONS (GEOSTATIONARY ORBIT): NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING

Licensee	Call sign	Satellite name	Type
ABS Global Ltd	S2987	ABS-3A	GSO
Avanti Hylas 2 Ltd	S3130	HYLAS-4	GSO
DBSD Services Ltd	S2651	DBSD G1	GSO
Embratel TVSAT Telecomunicacoes S.A	S3142	Star One D2	GSO
Empresa Argentina de Soluciones Satelitales S.A	S2956	ARSAT-2	GSO
Eutelsat S.A	S3056	EUTELSAT 8 WEST B	GSO
Eutelsat S.A	S3055	EUTELSAT 139 WEST A	GSO
Gamma Acquisition L.L.C	S2633	TerreStar 1	GSO
Hisparmar Satélites, S.A	S2793	AMAZONAS-2	GSO
Hisparmar Satélites, S.A	S2886	AMAZONAS-3	GSO
Hisparmar Satélites, S.A	S3086	AMAZONAS NEXUS	GSO
Hispasat, S.A	S2969	HISPASAT 30W-6	GSO
Inmarsat PLC	S2932	Inmarsat-4 F3	GSO
Inmarsat PLC	S2949	Inmarsat-3 F5	GSO
New Skies Satellites B.V	S2756	NSS-9	GSO
New Skies Satellites B.V	S2870	SES-6	GSO
New Skies Satellites B.V	S3048	NSS-6	GSO
New Skies Satellites B.V	S2828	SES-4	GSO
New Skies Satellites B.V	S2950	SES-10	GSO
Satelites Mexicanos, S.A. de C.V	S2695	EUTELSAT 113 WEST A	GSO
Satelites Mexicanos, S.A. de C.V	S2926	EUTELSAT 117 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2938	EUTELSAT 115 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2873	EUTELSAT 117 WEST A	GSO
SES Satellites (Gibraltar) Ltd	S2676	AMC 21	GSO
SES Americom, Inc	S3037	NSS-11	GSO
SES Americom, Inc	S2964	SES-11	GSO
SES DTH do Brasil Ltda	S2974	SES-14	GSO
Telesat Canada	S2745	ANIK F1	GSO
Telesat Canada	S2674	ANIK F1R	GSO
Telesat Canada	S2703	ANIK F3	GSO
Telesat Canada	S2472	ANIK F2	GSO
Telesat International Ltd	S2955	TELSTAR 19 VANTAGE	GSO
Viasat, Inc	S2902	VIASAT-2	GSO

SPACE STATIONS (GEOSTATIONARY ORBIT): NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH EARTH STATION LICENSES

Licensee	Call sign	Satellite name	Type
APSTAR VI	APSTAR 6	M292090	GSO
AUSSAT B 152E	OPTUS D2	M221170	GSO
Ciel Satellite Group	Ciel-2	E050029	GSO
Eutelsat 65 West A	Eutelsat 65 West A	E160081	GSO
INMARSAT 4F1	INMARSAT 4F1	KA25	GSO
INMARSAT 5F2	INMARSAT 5F2	E120072	GSO
INMARSAT 5F3	INMARSAT 5F3	E150028	GSO
JCSAT-2B	JCSAT-2B	M174163	GSO
NIMIQ 5	NIMIQ 5	E080107	GSO
WILDBLUE-1	WILDBLUE-1	E040213	GSO

SPACE STATIONS (PER LICENSE/CALL SIGN IN NON-GEOSTATIONARY ORBIT)
(Small Satellite)

ITU Name (if available)	Common name	Call sign	Type
Capella Space Corp	Capella-2, Capella-3, Capella-4 ...	S3073	Small Satellite.
Capella Space Corp	Capella-5, Capella-6	S3080	Small Satellite.
Capella Space Corp	Capella-7, Capella-8	S3100	Small Satellite.
Capella Space Corp	Acadia-1	S3162	Small Satellite.
Launcher, Inc	Orbiter SN3	S3161	Small Satellite.
Loft Orbital Solutions Inc	YAM-3	S3072	Small Satellite.
Loft Orbital Solutions Inc	YAM-5	S3147	Small Satellite.
Turion Space Corp	DROID.001	S3146	Small Satellite.
R2 Space, Inc	XR-1	S3067	Small Satellite.
ICEYE US, Inc	ICEYE	S3082	Small Satellite.
Umbra Lab Inc	Umbra SAR	S3095	Small Satellite.
Space Logistics, LLC	MISSION EXTENSION VEHI- CLE-1.	S2990	RPO/OOS.
Space Logistics, LLC	MISSION EXTENSION VEHI- CLE-2.	S3059	RPO/OOS.
Momentus Space LLC	VIGORIDE-5	S3144	OTV.
Momentus Space LLC	VIGORIDE-6	S3154	OTV.
Spaceflight Inc	SHERPA-AC1	S3133	OTV.
Lynk Global, Inc	Lynk Tower 1-10	S3087	Small Satellite.
Outpost Technologies Corporation	Outpost Mission 2	S3174	Small Satellite.
Odyssey SpaceWorks	OSW Cazorla	S3176	Small Satellite.
ICEYE US, Inc	ICEYE Second Tranche	S3165	Small Satellite.

SPACE STATIONS (NON-GEOSTATIONARY ORBIT)—LESS COMPLEX

ITU name (if available)	Common name	Call sign	Type	Number of space stations authorized
Planet Labs	Flock/Skysats	S2912	Less Complex	566
Maxar License	WorldView 1,2 & 3, GeoEye-1	S2129/S2348	Less Complex	15
BlackSky Global	Global	S3032	Less Complex	16
Orbital Sidekick, Inc	GHOST	S3139	Less Complex	6
Hawkeye 360	HE360	S3042	Less Complex	174
Spire Global	LEMUR & MINAS	S2946/S3045	Less Complex	636

SPACE STATIONS (NON-GEOSTATIONARY ORBIT)—OTHER (SMALL CONSTELLATION)

ITU name (if available)	Common name	Call sign	Number of space stations authorized
ORBCOMM License Corp	ORBCOMM	S2103	72
Iridium Constellation LLC	IRIDIUM	S2110	99
Telesat Canada	TELESAT Ku/Ka-Band	S2976	117
Kepler Communications, Inc	KEPLER	S2981	140
Myriota Pty. Ltd	MYRIOTA	S3047	26
O3b Ltd	O3b	S2935	42
Globalstar License LLC	GLOBALSTAR	S2115	96
Swarm Technologies (Space Exploration Holdings, LLC).	SWARM	S3041	150
Theia Holdings A, Inc	THEIA	S2986	112
Space Norway AS	ARCTIC SATELLITE BROADBAND MISSION	S2978	2
Kinéis	KINÉIS	S3054	25

SPACE STATIONS (NON-GEOSTATIONARY ORBIT)—OTHER (LARGE CONSTELLATION)

ITU name (if available)	Common name	Call sign	Number of space stations authorized
Space Exploration Holdings, LLC	SPACEX Ku/Ka-Band	S2983/S3018/ S3069	4408 7500
Space Exploration Holdings, LLC	SPACEX GEN 2	S2963	720
WorldVu Satellites Ltd	ONEWEB	S2994	2000
WorldVu Satellites Limited, Debtor-in-Possession	ONEWEB V-BAND	S3051	5236
Kuiper Systems LLC	KUIPER		

Table B—FY 2024 Space and Earth Station Regulatory Fees Calculations if Proposals To Amend the Existing Fee Methodology are Adopted and Effective

The following chart provides an analysis of potential regulatory fees for space and earth stations for FY 2024 assuming all the proposals to amend the existing methodology for determining space and earth station fees in the *Space and Earth Station Regulatory Fees*

Notice of Proposed Rulemaking (NPRM), FCC 24–31, are adopted and effective for FY 2024. These proposals include reallocation of the split of space station regulatory fees between GSO and NGSO from 80/20 to 60/40, creation of new fee categories for Large and Small Constellations in the NGSO “other” category, assessment of fees on authorized, not just operational, space stations, establishment of a fixed fee for small satellites/spacecraft fee, assessing

fees on rendezvous and proximity operations (RPO), on-orbit servicing (OOS), and orbital transfer vehicle (OTV) space stations using the fee category for small satellites, and an allocation of 20% of Space Bureau regulatory fees to earth stations. It assumes the same number of earth station payors in FY 2024 as there were in FY 2023 (2900 units). It does not incorporate the proposals included in the alternative methodology.

Space Bureau Share of FCC FY 2024 Appropriation	\$42,140,736 (rounded up to nearest dollar).
Equals \$390,192,000 times 10.8%	
Earth Station Share of Space Bureau FTE Burden	\$8,428,148 (rounded up to nearest dollar).
Equals Space Bureau Share of FCC FY 2024 Appropriation * 20% (proposed)	
Per Unit Fee—Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).	\$2,907 (rounded up to nearest dollar).
Equals Earth Station Share of Space Bureau FTE Burden/2,900 units (FY 2023)	
Space Station Share of Space Bureau FTE Burden (Includes GSO and NGS O Satellites)..	\$33,712,589 (rounded up to nearest dollar).
Equals GSO Space Bureau Share of FCC FY 2024 Appropriation * 80% (proposed).	\$26,970,070 divided by 136 GSO Satellites = \$198,309 per satellite.
Equals GSO Space Station Share of Space Bureau FTE Burden * 60% (proposed).	\$20,227,553 divided by 136 GSO Satellites = \$148,732.
Small Satellite Share of Space Station Share	\$244,300 (rounded up to nearest dollar).
Equals FY 2023 small satellite fee (\$12,215) * 20 estimated small satellite fee payors in FY 2024 (including RPO, OOS, or OTV space stations).	NGSO—Other Revenue Portion—\$195,440.
	NGSO—Less Complex Portion—\$48,860.
NGSO Space Station Share of Space Bureau FTE Burden	\$13,485,035 (rounded up to nearest dollar).
Equals NGSO Space Station Share of Space Bureau FTE Burden * 40% (proposed)).	\$10,788,028 divided by 16 units = \$674,252 fee.
NGSO—Other at 80%	With Small Satellite Reduction = \$662,037.
NGSO—Less Complex at 20%	\$2,697,007 divided by 6 units = \$449,501 fee.
	With Small Satellite Reduction = \$441,358.
NGSO Space Station Share of Space Bureau FTE Burden	\$6,742,518 (rounded up to nearest dollar).
Share at 20% (proposed)	\$5,394,014 divided by 16 units = \$337,126.
Equals NGSO Space Station Share—20%	With Small Satellite Reduction = \$324,911.
NGSO—Other at 80%	\$1,348,504 divided by 6 units = \$224,751.
NGSO—Less Complex at 20%	With Small Satellite Reduction = \$216,607.
Space Stations (Non-Geostationary Orbit)—Other (Large Constellations) Share.	\$5,394,014 divided by 50% = \$2,697,007.
Equals NGSO Other * 50% – Proposed 20%	
Per System Fee—Space Stations (Non-Geostationary Orbit)—Other (Large Constellations).	\$5,394,014 divided by 3 = \$1,798,005 (rounded up to nearest dollar).
Equals NGSO Other (Large Constellation) Share/3 authorized (SpaceX, OneWeb, Kuiper)	
Space Stations (Non-Geostationary Orbit)—Other (Small Constellations) Share.	\$5,394,014 divided by 50% = \$2,697,007.
Equals NGSO Other * 50% – Proposed 20%	
Per System Fee—Space Stations (Non-Geostationary Orbit)—Other (Small Constellations).	\$5,394,014 divided by 12 = \$449,501 (rounded up to nearest dollar).
Equals NGSO Other (Small Constellation) Share/12 authorized (O3b, Kepler, Swarm, Iridium, Globalstar, Orbcomm Space Norway, Theia, Viasat, Myriota, Kineis, Telesat)	
Space Stations (Non-Geostationary Orbit)—Other (Large Constellations) Share.	\$10,788,028 divided by 50% = \$5,394,014.
Equals NGSO Other * 50%—Proposed 40%	
Per System Fee—Space Stations (Non-Geostationary Orbit)—Other (Large Constellations).	\$10,788,028 divided by 3 = \$3,596,009 (rounded up to nearest dollar).
Equals NGSO Other (Large Constellation) Share/3 authorized (SpaceX, OneWeb, Kuiper)	
Space Stations (Non-Geostationary Orbit)—Other (Small Constellations) Share.	\$10,788,028 divided by 50% = \$5,394,014.
Equals NGSO Other * 50%—Proposed 40%	
Per System Fee—Space Stations (Non-Geostationary Orbit)—Other (Small Constellations).	\$10,788,028 divided by 12 = \$899,002 (rounded up to nearest dollar).
Equals NGSO Other (Small Constellation) Share/12 authorized (O3b, Kepler, Swarm, Iridium, Globalstar, Orbcomm Space Norway, Theia, Viasat, Myriota, Kineis, Telesat)	

Table C—FY 2024 Space and Earth Station Regulatory Fees Calculated if the Proposed Alternative Fee Methodology is Adopted and Effective

The following chart provides an analysis of potential regulatory fees for space and earth stations for FY 2024 if the alternative methodology for assessing space station fees in the *Space and Earth Station Regulatory Fees Notice of Proposed Rulemaking* (NPRM), FCC 24–31, is adopted and effective for FY 2024. It assumes that the share of space station regulatory fees will be 80% of all Space Bureau fees for FY 2024 (\$33,712,589), and that 20

small satellite payors (including RPO, OOS, and OTV space stations) will contribute \$244,300 in collections, resulting in \$33,468,289 to be collected from remaining space station payors. It also assumes that the proposal to assess regulatory fees on authorized, not just operational, space stations is adopted. *Number of GSO Units:* 150 (estimate of 135 operational and 15 authorized GSO space stations for FY 2024) *Number of NGSO Units (non-small sats):* 70 (using 500 space station tiers); 49 (using 1,000 space station tiers) *Total Number of Units (GSO + NGSO (non-small sats)):* 220 (using 500

space station tiers); 199 (using 1000 space station tiers) *Fee per Unit/Tier:* \$152,129 (500 space station tier); \$168,182 (1,000 space station tier) (This number would be the annual fee for all authorized GSO space stations; for NGSO space stations—other than small satellites—the fee would be calculated by taking the fee per unit for the first 100 authorized space stations per system, and adding the number of additional units, on either per 500 or per 1000 authorized space stations for each additional tier)

Licensee—call sign(s)	Number of authorized space stations	Number of units assessed (500 tier)	Total estimated fee (500 tier)	Number of units assessed (1,000 tier)	Total estimated fee (1,000 tier)
Maxar (WORLDVIEW 1, 2, and 3/WORLDVIEW LEGION 1–12), S2129.	15	1	\$152,129	1	\$168,183
Planet FLOCK/SKYSAT/PELICAN, S2912	566	3	456,386	2	336,365
SPIRE GLOBAL, S2946/S3045	636	3	456,386	2	336,365
BlackSky Global, S3032	16	1	152,129	1	168,183
Hawkeye 360, S3042	174	2	304,258	2	336,365
Swarm, S3041	150	2	304,258	2	336,365
Orbital Sidekick, S3139	16	1	152,129	1	168,183
Myriota, S3047	26	1	152,129	1	168,183
Kineis, S3054	25	1	152,129	1	168,183
ORBCOMM License Corp., S2103	72	1	152,129	1	168,183
Iridium Constellation LLC, S2110	99	1	152,129	1	168,183
GLOBALSTAR, S2115	96	1	152,129	1	168,183
O3b, S2935	42	1	152,129	1	168,183
WorldVU Satellites Ltd. (OneWeb) Ku-/Ka-band/V-band, S2963/S2994.	2720	6	912,772	4	672,730
Telesat Canada (Ku/Ka-band), S2976	117	2	304,258	2	336,365
Theia, S2986	112	2	304,258	2	336,365
Space Norway, S2978	2	1	152,129	1	168,183
Kepler Communications, Inc., S2981	140	2	304,258	2	336,365
Viasat, S2985	20	1	152,129	1	168,183
Kuiper, S3051	5236	12	1,825,544	7	1,177,277
SpaceX (Ku/Ka-band/Gen-2), S2983/S3018/S3069.	11,908	25	3,803,215	13	2,186,371
Total Number of NGSO Units		70	10,659,001	49	8,240,936
Total Number of GSO Units		150	22,812,889	150	25,227,354
Totals		220	33,468,289	199	33,468,289

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
3246	KAAH-TV	1,018,897	939,246	\$6,197
18285	KAAL	605,222	580,564	3,831
11912	KAAS-TV	243,984	243,947	1,610
56528	KABB	3,017,860	3,000,477	19,797
282	KABC-TV	18,303,336	17,670,502	116,590
1236	KACV-TV	383,228	383,071	2,528
33261	KADN-TV	889,583	889,583	5,869
8263	KAFF-TV	139,510	124,133	819
2728	KAET	4,867,739	4,836,434	31,911
2767	KAFT	1,294,492	1,218,670	8,041
62442	KAID	864,547	857,276	5,656
4145	KAIL-TV	203,698	179,435	1,184
67494	KAIL	2,091,288	2,061,175	13,600
13988	KAIT	594,090	583,749	3,852
40517	KAJB	393,654	393,355	2,595
65522	KAKE	821,488	816,811	5,389
804	KAKM	397,237	395,241	2,608

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
148	KAKW-DT	3,350,876	3,242,159	21,392
51598	KALB-TV	933,915	932,500	6,153
51241	KALO	1,018,088	971,631	6,411
40820	KAMC	411,973	411,949	2,718
8523	KAMR-TV	377,485	377,410	2,490
65301	KAMU-TV	395,784	392,044	2,587
2506	KAPP	337,194	298,159	1,967
3658	KARD	680,743	678,724	4,478
23079	KARE	4,243,145	4,234,439	27,939
33440	KARK-TV	1,243,813	1,230,366	8,118
37005	KARZ-TV	1,153,588	1,134,221	7,484
32311	KASA-TV	1,198,361	1,159,350	7,649
41212	KASN	1,200,705	1,185,725	7,823
7143	KASW	4,828,272	4,813,078	31,757
55049	KASY-TV	1,182,887	1,143,258	7,543
33471	KATC	1,376,057	1,376,057	9,079
13813	KATN	95,520	95,197	628
21649	KATU	3,400,708	3,238,560	21,368
33543	KATV	1,285,451	1,265,986	8,353
50182	KAUT-TV	1,810,654	1,809,428	11,939
21488	KAUU	398,876	396,486	2,616
6864	KAUZ-TV	366,943	365,162	2,409
73101	KAVU-TV	323,202	322,961	2,131
49579	KAWB	193,767	193,705	1,278
49578	Kawe	139,854	137,788	909
58684	KAYU-TV	925,282	861,276	5,683
29234	KAZA-TV	15,481,136	14,233,993	93,916
17433	KAZD	8,087,952	8,085,339	53,347
776273	KAZF	253,785	188,057	1,241
1151	KAZQ	1,137,703	1,126,947	7,436
35811	KAZT-TV	495,353	409,112	2,699
4148	KBAK-TV	1,626,532	1,363,867	8,999
16940	KBCA	465,218	465,157	3,069
53586	KBCB	1,510,168	1,478,647	9,756
22685	KBDI-TV	4,731,715	4,335,180	28,604
56384	KBEH	18,512,098	18,476,669	121,909
65395	KBFD-DT	1,016,508	887,671	5,857
169030	KBGS-TV	176,432	173,977	1,148
61068	KBHE-TV	153,390	144,914	956
48556	KBIM-TV	226,233	226,194	1,492
29108	KBIN-TV	1,014,918	1,013,041	6,684
33658	KBJR-TV	278,564	274,572	1,812
83306	KBLN-TV	322,286	145,745	962
63768	KBLR	2,280,730	2,220,879	14,653
53324	KBME-TV	146,149	146,082	964
10150	KBMT	799,217	798,262	5,267
22121	KBMV	142,682	142,622	941
49760	KBOI-TV	869,688	862,287	5,689
55370	KBRR	154,408	154,405	1,019
66414	KBSD-DT	151,986	151,901	1,002
66415	KBSH-DT	97,884	95,916	633
19593	KBSI	730,259	728,325	4,805
66416	KBSL-DT	47,462	46,328	306
4939	KBSV	1,535,281	1,424,913	9,402
62469	KBTC-TV	4,319,699	4,228,861	27,902
61214	KBTX-TV	771,692	771,692	5,092
6669	KBTX-TV	5,354,551	5,351,089	35,306
35909	KBVO	1,911,833	1,684,206	11,112
58618	KBVU	136,908	121,846	804
6823	KBYU-TV	2,838,181	2,620,447	17,290
33756	KBZK	156,388	139,258	919
21422	KCAL-TV	18,258,912	17,586,821	116,038
11265	KCAU-TV	769,096	754,352	4,977
14867	KCBA	3,334,176	2,557,080	16,872
27507	KCBD	433,372	432,694	2,855
9628	KCBS-TV	18,628,137	17,359,665	114,539
49750	KCBY-TV	92,825	77,624	512
33710	KCCI	1,216,146	1,209,219	7,978
9640	KCCW-TV	294,831	287,246	1,895
63158	KCDO-TV	3,305,368	3,160,730	20,854
62424	KCDT	807,726	762,258	5,029

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
83913	KCEB	446,377	445,850	2,942
57219	KCEC	4,497,531	4,237,580	27,960
10245	KCEN-TV	2,224,490	2,174,193	14,345
13058	KCET	17,868,933	16,310,676	107,618
18079	KCFW-TV	196,292	157,001	1,036
132606	KCGE-DT	129,244	129,244	853
60793	KCHF	1,157,628	1,127,207	7,437
33722	KCIT	392,243	391,646	2,584
62468	KCKA	1,082,723	906,771	5,983
41969	KCLO-TV	150,949	145,392	959
47903	KCNC-TV	4,460,509	4,175,114	27,547
71586	KCNS	9,007,762	8,012,556	52,867
33742	KCOP-TV	18,134,022	17,318,605	114,268
19117	KCOS	1,092,982	1,092,792	7,210
63165	KCOY-TV	700,154	478,768	3,159
33894	KCPQ	5,131,164	4,985,829	32,896
53843	KCPT	2,690,171	2,688,808	17,741
33875	KCRA-TV	11,608,107	7,153,845	47,201
9719	KCRG-TV	1,174,546	1,156,435	7,630
60728	KCSD-TV	323,237	323,093	2,132
59494	KCSG	229,899	220,818	1,457
33749	KCTS-TV	4,848,434	4,778,758	31,530
41230	KCTV	2,732,197	2,730,443	18,015
58605	KCVU	700,745	689,702	4,551
10036	KCWC-DT	42,872	38,501	254
64444	KCWE	2,642,880	2,641,432	17,428
51502	KCWI-TV	1,152,163	1,151,070	7,595
42008	KCWO-TV	55,411	55,383	365
166511	KCWV	210,633	210,626	1,390
24316	KCWX	4,947,756	4,941,660	32,605
68713	KCWY-DT	85,085	84,715	559
22201	KDAF	7,951,276	7,949,040	52,448
33764	KDBC-TV	1,101,513	1,097,028	7,238
79258	KDCK	43,010	42,993	284
166332	KDCU-DT	773,823	773,808	5,106
38375	KDEN-TV	3,968,060	3,943,641	26,020
17037	KDFI	7,990,955	7,989,287	52,713
33770	KDFW	7,962,141	7,959,855	52,519
29102	KDIN-TV	1,193,740	1,189,191	7,846
25454	KDKA-TV	3,569,162	3,428,192	22,619
60740	KDKF	73,619	66,137	436
4691	KDLH	267,326	264,686	1,746
41975	KDLO-TV	214,024	213,819	1,411
55379	KDLT-TV	700,230	689,305	4,548
55375	KDLV-TV	98,101	97,673	644
25221	KDMD	394,250	391,278	2,582
78915	KDMI	1,248,443	1,247,337	8,230
56524	KDNL-TV	3,013,924	3,009,244	19,855
24518	KDOC-TV	18,264,021	17,379,123	114,667
1005	KDOR-TV	1,180,603	1,177,894	7,772
60736	KDRV	551,809	469,537	3,098
61064	KDSD-TV	65,355	60,171	397
53329	KDSE	52,777	51,188	338
56527	KDSM-TV	1,202,702	1,201,866	7,930
49326	KDTN	7,901,133	7,898,922	52,117
83491	KDTP	25,965	23,729	157
33778	KDTV-DT	8,697,794	7,750,134	51,135
67910	KDTX-TV	7,985,188	7,983,676	52,676
126	KDVR	4,301,541	4,144,268	27,344
18084	KECI-TV	228,161	210,560	1,389
51208	KECY-TV	407,175	403,848	2,665
58408	KEDT	527,343	527,343	3,479
55435	KEET	181,333	161,389	1,065
37103	KEKE	105,022	101,614	670
41983	KELO-TV	767,130	715,437	4,720
34440	KEMO-TV	9,007,762	8,012,556	52,867
776162	KEMS	55,920	54,847	362
2777	KEMV	634,060	576,758	3,805
26304	KENS	3,091,086	3,077,749	20,307
63845	KENV-DT	52,294	45,932	303
18338	KENW	85,762	85,762	566

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
50591	KEPB-TV	631,758	574,973	3,794
56029	KEPR-TV	515,354	493,941	3,259
49324	KERA-TV	7,984,381	7,981,440	52,662
40878	KERO-TV	1,387,245	1,257,683	8,298
61067	KESD-TV	172,302	165,214	1,090
25577	KESQ-TV	1,487,393	615,803	4,063
50205	KETA-TV	1,874,445	1,860,161	12,273
62182	KETC	2,945,200	2,942,622	19,415
37101	KETD	3,918,776	3,879,692	25,598
2768	KETG	421,357	403,179	2,660
12895	KETH-TV	7,296,694	7,296,428	48,142
55643	KETK-TV	1,072,485	1,071,097	7,067
2770	KETS	1,209,518	1,191,713	7,863
53903	KETV	1,491,674	1,486,408	9,807
92872	KETZ	505,102	502,310	3,314
68853	KEYC-TV	553,554	539,853	3,562
33691	KEYE-TV	3,533,479	3,444,549	22,727
60637	KEYT-TV	1,466,777	1,275,243	8,414
83715	KEYU	351,434	351,403	2,319
34406	KEZI	1,221,893	1,166,907	7,699
34412	KFBB-TV	96,782	95,488	630
125	KFCT	967,548	960,099	6,335
51466	KFDA-TV	394,744	393,695	2,598
22589	KFDM	770,621	770,609	5,084
48521	KFDR	672,350	657,307	4,337
65370	KFDX-TV	367,320	366,583	2,419
49264	KFFV	4,674,758	4,634,964	30,581
12729	KFFX-TV	467,787	463,006	3,055
83992	KFJX	709,125	679,797	4,485
42122	KFMB-TV	4,239,135	3,914,207	25,826
53321	KFME	442,176	441,664	2,914
74256	KFNB	84,543	83,990	554
21613	KFNE	53,059	52,392	346
21612	KFNR	9,724	9,457	62
66222	KFOR-TV	1,789,693	1,789,342	11,806
33716	KFOX-TV	1,107,424	1,097,251	7,240
41517	KFPH-DT	385,474	313,720	2,070
81509	KFPX-TV	1,072,290	1,072,222	7,075
31597	KFQX	197,918	173,495	1,145
59013	KFRE-TV	1,850,426	1,835,478	12,110
51429	KFSF-DT	7,986,866	7,039,241	46,445
66469	KFSM-TV	1,003,012	978,896	6,459
8620	KFSN-TV	1,973,852	1,957,279	12,914
29560	KFTA-TV	907,937	894,593	5,903
83714	KFTC	64,284	64,250	424
60537	KFTH-DT	7,287,908	7,287,530	48,083
60549	KFTR-DT	18,326,526	16,971,273	111,976
61335	KFTS	77,847	66,866	441
81441	KFTU-DT	109,271	105,476	696
34439	KFTV-DT	1,930,415	1,914,464	12,632
664	KFVE	91,164	81,417	537
592	KFVS-TV	867,835	847,638	5,593
29015	KFWD	7,970,373	7,964,229	52,548
35336	KFXA	914,357	912,893	6,023
17625	KFXB-TV	377,548	370,365	2,444
70917	KFXK-TV	969,012	966,868	6,379
84453	KFXL-TV	977,327	976,428	6,442
56079	KFXV	1,335,643	1,335,643	8,813
41427	KFYR-TV	153,218	150,858	995
25685	KGAN	1,121,266	1,109,006	7,317
34457	KGAT-TV	1,350,104	1,350,004	8,907
7841	KGCW	938,174	935,835	6,175
24485	KGEB	1,257,918	1,224,797	8,081
34459	KGET-TV	982,744	940,071	6,203
53320	KGFE	120,237	120,237	793
7894	KGIN	235,875	233,749	1,542
83945	KGLA-DT	1,754,806	1,754,806	11,578
34445	KGMB	1,016,756	907,381	5,987
58608	KGMC	2,076,523	2,052,808	13,544
36914	KGMD-TV	101,247	100,762	665
36920	KGMV	209,577	175,904	1,161

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
10061	KGNS-TV	283,777	274,877	1,814
34470	KGO-TV	9,406,080	8,630,291	56,943
56034	KGPE	1,829,902	1,812,936	11,962
81694	KGPX-TV	792,059	724,592	4,781
25511	KGTF	155,729	154,491	1,019
40876	KGTU	4,257,568	3,912,037	25,812
36918	KGUN-TV	1,479,221	1,292,183	8,526
34874	KGW	3,397,112	3,239,730	21,376
63177	KGWC-TV	84,597	84,117	555
63162	KGWL-TV	37,314	37,199	245
63166	KGWN-TV	558,685	528,237	3,485
63170	KGWR-TV	49,435	49,242	325
4146	KHAW-TV	102,381	101,946	673
60353	KHBS	610,455	588,263	3,881
27300	KHCE-TV	2,848,289	2,842,696	18,756
26431	KHET	1,022,459	1,009,772	6,662
21160	KHGI-TV	245,331	244,515	1,613
36917	KHII-TV	1,017,217	907,842	5,990
29085	KHIN	1,137,059	1,135,866	7,494
17688	KHME	196,002	194,233	1,282
47670	KHMT	193,159	188,714	1,245
47987	KHNE-TV	205,833	204,923	1,352
34867	KHNL	1,016,725	907,350	5,987
60354	KHOG-TV	862,177	797,810	5,264
4144	KHON-TV	1,016,508	944,271	6,230
34529	KHOU	7,289,635	7,287,991	48,086
4690	KHQA-TV	299,409	298,038	1,966
34537	KHQ-TV	938,773	887,184	5,854
30601	KHRR	1,298,625	1,241,818	8,194
34348	KHSD-TV	203,077	199,032	1,313
24508	KHSL-TV	634,956	615,388	4,060
69677	KHSV	2,384,812	2,343,597	15,463
64544	KHVO	101,138	99,980	660
23394	KIAH	7,307,171	7,306,816	48,210
34564	KICU-TV	8,992,796	7,837,235	51,710
56028	KIDK	351,335	348,794	2,301
58560	KIDY	126,096	126,079	832
53382	KIEM-TV	177,885	166,501	1,099
66258	KIFI-TV	370,169	365,995	2,415
16950	KIFR	2,356,175	2,330,021	15,373
10188	KIII	580,363	577,602	3,811
29095	KIIN	1,405,103	1,375,871	9,078
34527	KIKU	1,017,227	920,837	6,076
63865	KILM	18,009,859	16,478,550	108,725
56033	KIMA-TV	325,241	275,599	1,818
66402	KIMT	671,281	662,859	4,374
67089	KINC	2,320,873	2,230,933	14,720
34847	KING-TV	4,735,386	4,686,752	30,923
51708	KINT-TV	1,093,579	1,093,227	7,213
26249	KION-TV	2,602,418	906,539	5,981
62427	KIPT	190,856	189,839	1,253
66781	KIRO-TV	4,715,994	4,685,383	30,914
62430	KISU-TV	358,145	353,319	2,331
12896	KITU-TV	749,934	749,934	4,948
64548	KITV	1,016,508	890,101	5,873
59255	KIVI-TV	864,257	856,996	5,654
47285	KIXE-TV	484,629	444,405	2,932
13792	KJJC-TV	85,813	84,995	561
14000	KJLA	18,725,198	17,464,578	115,231
20015	KJNP-TV	96,266	96,001	633
53315	KJRE	15,414	15,394	102
59439	KJRH-TV	1,475,194	1,458,401	9,623
55364	KJRR	45,707	44,148	291
7675	KJTL	365,659	365,242	2,410
55031	KJTV-TV	426,315	426,302	2,813
13814	KJUD	32,087	31,083	205
36607	KJZZ-TV	2,837,622	2,620,561	17,290
83180	KKAI	1,016,756	995,859	6,571
58267	KKAP	1,002,980	967,770	6,385
24766	KKCO	218,313	183,190	1,209
776228	KKEL	396,796	390,474	2,576

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
35097	KKJB	780,452	775,264	5,115
22644	KKPX-TV	8,265,775	7,324,470	48,327
35037	KKTU	3,340,505	2,899,502	19,131
35042	KLAS-TV	2,421,827	2,256,225	14,887
52907	KLAX-TV	350,490	350,144	2,310
3660	KLBB-TV	409,551	409,512	2,702
65523	KLBY	29,875	29,852	197
38430	KLCS	17,868,933	16,310,676	107,618
77719	KLCW-TV	404,384	404,369	2,668
51479	KLDO-TV	267,717	267,717	1,766
37105	KLEI	149,648	122,977	811
56032	KLEW-TV	173,816	158,086	1,043
35059	KLFY-TV	1,380,417	1,379,775	9,104
54011	KLJB	1,003,676	992,763	6,550
11264	KLKN	1,295,353	1,249,913	8,247
52593	KLML	285,490	232,725	1,536
47975	KLNE-TV	124,206	124,134	819
38590	KLPA-TV	395,240	395,079	2,607
38588	KLPB-TV	749,224	749,224	4,943
749	KLRN	2,865,059	2,843,302	18,760
11951	KLRT-TV	1,206,848	1,187,015	7,832
8564	KLRU	3,404,331	3,364,831	22,201
8322	KLSR-TV	617,791	555,511	3,665
31114	KLST	205,611	176,862	1,167
24436	KLTJ	7,239,268	7,239,082	47,763
38587	KLTL-TV	438,847	438,847	2,896
38589	KLTM-TV	670,083	665,283	4,390
38591	KLTS-TV	930,704	927,650	6,121
68540	KLTV	1,125,646	1,108,403	7,313
12913	KLUJ-TV	1,304,523	1,304,523	8,607
57220	KLUZ-TV	1,122,002	1,061,683	7,005
11683	KLVX	2,368,176	2,246,495	14,822
82476	KLWB	1,066,369	1,066,248	7,035
40250	KLWY	652,057	648,301	4,277
64551	KMAU	230,508	205,410	1,355
51499	KMAX-TV	11,771,919	7,828,092	51,650
65686	KMBC-TV	2,690,459	2,688,812	17,741
35183	KMCB	71,693	69,118	456
41237	KMCC	2,384,330	2,325,062	15,341
42636	KMCI-TV	2,611,447	2,610,077	17,221
38584	KMCT-TV	270,862	270,855	1,787
22127	KMCY	80,761	80,722	533
162016	KMDE	34,041	34,035	225
26428	KMEB	239,702	216,916	1,431
39665	KMEG	763,806	758,839	5,007
35123	KMEX-DT	18,389,371	16,955,856	111,875
40875	KMGH-TV	4,484,612	4,211,082	27,785
35131	KMID	453,896	453,890	2,995
16749	KMIR-TV	3,014,399	805,795	5,317
63164	KMIZ	552,020	549,962	3,629
53541	KMLM-DT	358,819	358,819	2,367
52046	KMLU	685,717	681,660	4,498
47981	KMNE-TV	44,963	41,160	272
24753	KMOH-TV	217,161	202,513	1,336
4326	KMOS-TV	823,502	819,698	5,408
41425	KMOT	90,764	88,505	584
70034	KMOV	3,058,356	3,053,447	20,147
51488	KMPH-TV	1,871,826	1,831,011	12,081
73701	KMPX	7,985,243	7,981,841	52,664
44052	KMSB	1,390,772	1,081,454	7,135
68883	KMSP-TV	4,232,627	4,200,278	27,713
12525	KMSS-TV	1,047,384	1,044,317	6,890
43095	KMTP-TV	6,891,529	5,992,187	39,536
35189	KMTR	858,621	737,863	4,868
35190	KMTV-TV	1,482,627	1,481,213	9,773
77063	KMTW	782,241	782,233	5,161
35200	KMVT	203,865	194,642	1,284
32958	KMVU-DT	333,344	255,430	1,685
86534	KMYA-DT	181,750	181,710	1,199
51518	KMYS	2,695,906	2,689,444	17,745
54420	KMYT-TV	1,378,264	1,366,926	9,019

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
35822	KMYU	174,066	170,667	1,126
993	KNAT-TV	1,194,249	1,164,035	7,680
24749	KNAZ-TV	370,644	251,297	1,658
47906	KNBC	18,007,954	16,466,286	108,645
81464	KNBN	158,327	149,470	986
9754	KNCT	2,162,813	2,134,345	14,082
82611	KNDB	140,899	140,846	929
82615	KNDM	81,669	81,636	539
12395	KNDO	326,624	291,816	1,925
12427	KNDU	531,985	514,613	3,395
17683	KNEP	96,311	91,722	605
776145	KNGF	418,755	418,649	2,762
48003	KNHL	282,894	282,649	1,865
125710	KNIC-DT	2,916,877	2,900,176	19,135
59363	KNIN-TV	861,563	857,065	5,655
48525	KNLC	3,009,669	3,007,124	19,841
84215	KNMD-TV	1,175,472	1,147,431	7,571
55528	KNME-TV	1,185,928	1,145,659	7,559
47707	KNMT	3,242,939	3,141,420	20,727
48975	KNOE-TV	706,833	703,468	4,641
49273	KNOP-TV	84,998	83,626	552
10228	KNPB	684,366	522,715	3,449
55362	KNRR	24,339	24,315	160
35277	KNSD	4,176,531	3,908,916	25,791
19191	KNSN-TV	689,549	521,148	3,439
23302	KNSO	1,962,568	1,942,998	12,820
35280	KNTV	9,285,323	8,743,038	57,687
144	KNVA	3,326,171	3,285,676	21,679
33745	KNVN	497,887	470,307	3,103
69692	KNVO	1,359,785	1,359,785	8,972
29557	KNWA-TV	929,628	912,611	6,021
59440	KNXV-TV	4,836,838	4,826,028	31,842
59014	KOAA-TV	1,865,217	1,422,070	9,383
50588	KOAB-TV	254,424	250,749	1,654
50590	KOAC-TV	2,168,640	1,718,555	11,339
58552	KOAM-TV	822,738	789,385	5,208
53928	KOAT-TV	1,171,605	1,145,416	7,557
35313	KOB	1,189,849	1,152,270	7,603
35321	KOBF	198,225	163,241	1,077
8260	KOBI	595,619	551,251	3,637
62272	KOBR	227,347	226,868	1,497
50170	KOCB	1,803,171	1,802,139	11,891
4328	KOCE-TV	18,212,242	17,141,918	113,102
84225	KOCM	1,615,493	1,614,922	10,655
12508	KOCO-TV	1,890,246	1,881,152	12,412
83181	KOCW	80,292	80,262	530
18283	KODE-TV	789,082	781,251	5,155
66195	KOED-TV	1,555,369	1,523,164	10,050
50198	KOET	657,252	637,057	4,203
51189	KOFY-TV	5,746,338	4,850,897	32,006
34859	KOGG	206,000	173,034	1,142
166534	KOHD	248,737	244,163	1,611
35380	KOIN	3,398,786	3,237,691	21,362
35388	KOKH-TV	1,800,124	1,797,602	11,861
11910	KOKI-TV	1,428,477	1,415,308	9,338
48663	KOLD-TV	1,278,430	932,536	6,153
7890	KOLN	1,565,175	1,465,478	9,669
63331	KOLO-TV	1,045,027	912,343	6,020
28496	KOLR	1,111,540	1,075,340	7,095
21656	KOMO-TV	4,798,742	4,748,599	31,331
65583	KOMU-TV	560,878	559,926	3,694
776087	KONC	1,752,026	1,713,180	11,304
35396	KONG	4,651,055	4,627,490	30,532
60675	KOOD	107,949	107,840	712
50589	KOPB-TV	3,433,002	3,231,453	21,321
2566	KOPX-TV	1,674,969	1,674,820	11,050
64877	KORO	572,684	572,684	3,779
6865	KOSA-TV	412,004	408,993	2,699
34347	KOTA-TV	189,181	166,163	1,096
8284	KOTI	318,713	97,757	645
35434	KOTV-DT	1,476,322	1,464,332	9,662

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
56550	KOVR	11,787,731	7,857,430	51,843
51101	KOZJ	431,452	429,469	2,834
51102	KOZK	876,101	867,569	5,724
3659	KOZL-TV	1,026,947	999,396	6,594
35455	KPAX-TV	224,598	210,969	1,392
67868	KPAZ-TV	4,842,326	4,829,190	31,863
6124	KPBS	3,878,727	3,740,193	24,678
50044	KPBT-TV	405,749	405,749	2,677
77452	KPCB-DT	30,087	30,010	198
35460	KPDH	3,335,153	3,195,785	21,086
12524	KPEJ-TV	439,758	439,752	2,901
41223	KPHO-TV	4,847,036	4,823,456	31,825
61551	KPIC	162,187	108,923	719
86205	KPIF	294,133	287,132	1,894
25452	KPIX-TV	8,939,616	8,011,243	52,858
58912	KPJH	8,580,033	7,562,337	49,896
166510	KPJR-TV	3,994,308	3,966,833	26,173
13994	KPLC	1,433,578	1,431,830	9,447
41964	KPLO-TV	55,567	52,690	348
35417	KPLR-TV	3,020,349	3,017,559	19,910
12144	KPMR	1,795,745	1,521,941	10,042
47973	KPNE-TV	89,112	84,360	557
35486	KPNX	4,833,873	4,829,331	31,864
77512	KPNZ	2,843,405	2,620,343	17,289
73998	KPOB-TV	131,017	130,539	861
26655	KPPX-TV	4,839,734	4,825,175	31,837
53117	KPRC-TV	7,306,242	7,305,940	48,205
48660	KPRY-TV	42,882	42,790	282
61071	KPSD-TV	19,034	17,986	119
53544	KPTB-DT	351,156	349,137	2,304
81445	KPTF-DT	83,380	83,378	550
77451	KPTH	709,738	706,066	4,659
51491	KPTM	1,544,022	1,542,684	10,179
33345	KPTS	849,715	845,613	5,579
50633	KPTV	3,367,478	3,193,457	21,070
82575	KPTW	93,904	86,230	569
1270	KPVI-DT	301,761	295,401	1,949
58835	KPXB-TV	7,268,859	7,268,534	47,958
68695	KPXC-TV	3,953,241	3,922,814	25,883
68834	KPXD-TV	7,851,329	7,849,492	51,791
33337	KPXE-TV	2,621,434	2,620,523	17,290
5801	KPXG-TV	3,396,167	3,240,309	21,380
81507	KPXJ	1,114,713	1,111,470	7,333
61173	KPXL-TV	2,675,400	2,663,341	17,573
35907	KPXM-TV	3,872,706	3,871,246	25,542
58978	KPXN-TV	18,009,859	16,478,550	108,725
77483	KPXO-TV	1,016,659	977,430	6,449
21156	KPXR-TV	870,810	864,123	5,701
69619	KPYX	8,951,798	8,033,747	53,007
10242	KQCA	11,066,274	6,905,589	45,563
41430	KQCD-TV	46,118	43,974	290
18287	KQCK	3,914,615	3,869,797	25,533
78322	KQCW-DT	1,198,492	1,192,260	7,867
35525	KQDS-TV	309,526	305,800	2,018
35500	KQED	8,924,403	7,934,659	52,353
35663	KQEH	8,924,403	7,934,659	52,353
8214	KQET	3,221,916	2,234,120	14,741
5471	KQIN	585,179	585,151	3,861
17686	KQME	203,177	198,383	1,309
61063	KQSD-TV	32,060	31,225	206
8378	KQSL	209,114	145,828	962
20427	KQTV	1,587,910	1,493,576	9,855
78921	KQUP	801,534	624,922	4,123
306	KRBC-TV	237,068	236,992	1,564
166319	KRBK	1,018,307	1,001,775	6,610
22161	KRCA	18,303,336	17,670,502	116,590
57945	KRCB	9,553,735	9,246,484	61,008
41110	KRCG	758,918	744,644	4,913
8291	KRCR-TV	439,734	419,678	2,769
10192	KRCW-TV	3,330,638	3,194,693	21,079
49134	KRDK-TV	396,418	396,379	2,615

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
52579	KRDO-TV	3,041,472	2,649,733	17,483
70578	KREG-TV	159,270	97,419	643
34868	KREM	934,011	862,068	5,688
51493	KREN-TV	890,359	755,865	4,987
70596	KREX-TV	154,968	154,745	1,021
70579	KREY-TV	77,765	69,062	456
48589	KREZ-TV	148,142	101,846	672
43328	KRGV-TV	1,359,834	1,359,671	8,971
82698	KRII	130,753	129,582	855
29114	KRIN	989,283	975,977	6,439
25559	KRIS-TV	576,145	576,104	3,801
22204	KRIV	7,295,333	7,294,571	48,130
14040	KRMA-TV	4,385,284	4,186,932	27,625
14042	KRMJ	184,799	169,573	1,119
20476	KRMT	3,457,214	3,353,993	22,130
84224	KRMU	86,743	70,549	465
20373	KRMZ	37,319	34,727	229
47971	KRNE-TV	45,930	38,258	252
60307	KRNV-DT	1,043,407	879,554	5,803
65526	KRON-TV	9,335,037	8,729,878	57,600
53539	KRPV-DT	65,504	65,504	432
48575	KRQE	1,174,664	1,143,133	7,542
57431	KRSU-TV	1,078,345	1,076,370	7,102
82613	KRTN-TV	86,907	67,161	443
35567	KRTV	95,862	94,385	623
84157	KRWB-TV	118,050	117,368	774
35585	KRWF	82,308	82,308	543
55516	KRWG-TV	929,122	719,343	4,746
48360	KRXI-TV	802,294	612,918	4,044
307	KSAN-TV	142,667	142,664	941
11911	KSAS-TV	773,161	773,144	5,101
53118	KSAT-TV	3,075,254	3,027,321	19,974
35584	KSAX	380,811	380,811	2,513
35587	KSZ-TV	4,854,767	4,831,287	31,877
38214	KSBI	1,751,439	1,749,811	11,545
19653	KSBI	5,564,606	4,838,506	31,924
19654	KSBI	564,561	526,110	3,471
82910	KSCC	534,707	534,707	3,528
10202	KSCC	1,093,223	1,089,485	7,188
35608	KSCI	18,212,242	17,141,918	113,102
72348	KSCW-DT	927,681	922,979	6,090
46981	KSDK	3,013,779	3,007,368	19,843
35594	KSEE	1,888,344	1,874,494	12,368
29121	KSFL-TV	330,215	330,182	2,179
48658	KSFY-TV	731,978	677,603	4,471
17680	KSGW-TV	63,725	62,410	412
59444	KSHB-TV	2,616,078	2,614,543	17,251
73706	KSHV-TV	927,614	927,074	6,117
29096	KSIN-TV	349,020	347,636	2,294
34846	KSIX-TV	79,019	79,019	521
35606	KSKN	841,494	741,761	4,894
70482	KSLA	998,682	998,217	6,586
6359	KSL-TV	2,839,353	2,616,980	17,267
71558	KSMN	357,081	357,075	2,356
33336	KSMO-TV	2,585,699	2,584,094	17,050
28510	KSMQ-TV	540,217	524,751	3,462
35611	KSMS-TV	1,684,095	922,727	6,088
21161	KSNB-TV	748,097	747,971	4,935
72359	KSNC	166,315	165,997	1,095
67766	KSNC	640,722	637,167	4,204
72361	KSNB	143,267	143,050	944
72362	KSNK	46,872	43,725	288
67335	KSNT	657,321	629,824	4,156
10179	KSNV	2,283,885	2,225,135	14,681
72358	KSNW	810,301	809,927	5,344
61956	KSPS-TV	935,711	883,159	5,827
52953	KSPX-TV	7,814,495	5,846,886	38,578
166546	KSQA	391,323	383,112	2,528
53313	KSRE	83,984	83,984	554
35843	KSTC-TV	4,228,163	4,218,565	27,834
63182	KSTF	49,439	49,305	325

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
28010	KSTP-TV	4,230,921	4,222,032	27,857
60534	KSTR-DT	7,934,904	7,932,227	52,337
64987	KSTS	9,125,502	7,902,723	52,142
22215	KSTU	2,834,133	2,604,938	17,187
23428	KSTW	4,945,092	4,849,973	32,000
5243	KSVI	192,678	191,712	1,265
58827	KSWB-TV	3,976,536	3,773,857	24,900
60683	KSWK	78,448	78,334	517
35645	KSWO-TV	461,432	437,725	2,888
61350	KSYS	551,328	475,899	3,140
59988	KTAB-TV	281,813	281,579	1,858
999	KTAJ-TV	2,529,426	2,528,757	16,685
35648	KTAL-TV	1,072,280	1,070,439	7,063
12930	KTAS	501,069	491,644	3,244
81458	KTAA	4,835,851	4,811,877	31,749
35649	KTBC	4,138,493	3,857,454	25,451
67884	KTBN-TV	18,729,484	17,423,297	114,959
67999	KTBO-TV	1,758,274	1,756,813	11,591
35652	KTBS-TV	1,138,628	1,135,638	7,493
28324	KTBU	7,242,592	7,242,368	47,785
67950	KTBW-TV	4,873,117	4,763,879	31,432
35655	KTBY	360,565	358,722	2,367
68594	KTCA-TV	4,022,616	4,008,908	26,451
68597	KTCL-TV	3,912,137	3,908,528	25,788
35187	KTCW	106,581	93,009	614
36916	KTDO	1,093,374	1,089,602	7,189
2769	KTEJ	417,496	415,013	2,738
83707	KTEL-TV	61,338	61,328	405
35666	KTEN	629,981	627,687	4,141
24514	KTFD-TV	3,767,471	3,727,523	24,594
35512	KTFE-DT	2,403,821	2,383,063	15,723
20871	KTFK-DT	7,705,367	5,721,312	37,749
68753	KTFN	1,095,022	1,091,962	7,205
35084	KTFQ-TV	1,188,205	1,154,792	7,619
29232	KTGM	153,836	153,653	1,014
2787	KTHV	1,302,388	1,276,430	8,422
29100	KTIN	275,295	273,715	1,806
66170	KTIV	806,217	800,304	5,280
49397	KTKA-TV	805,221	786,518	5,189
35670	KTLL	18,962,616	17,555,224	115,829
62354	KTLM	1,148,738	1,148,738	7,579
49153	KTLL-TV	5,867,943	5,221,797	34,453
64984	KTMD	7,304,022	7,303,795	48,190
14675	KTMF	203,121	182,458	1,204
10177	KTMW	2,690,440	2,543,730	16,784
21533	KTNC-TV	9,007,762	8,012,556	52,867
47996	KTNE-TV	95,310	90,746	599
60519	KTNL-TV	8,275	8,274	55
74100	KTNV-TV	2,422,112	2,249,532	14,842
71023	KTNW	512,412	493,366	3,255
8651	KTOO-TV	32,198	32,017	211
7078	KTPX-TV	1,138,473	1,136,085	7,496
68541	KTRE	438,137	420,563	2,775
35675	KTRK-TV	7,318,272	7,316,846	48,277
28230	KTRV-TV	869,223	861,267	5,683
69170	KTSC	3,598,645	3,397,164	22,414
61066	KTSD-TV	84,807	83,980	554
37511	KTSF	8,697,794	7,750,134	51,135
67760	KTSM-TV	1,093,389	1,090,716	7,197
35678	KTTC	836,828	748,435	4,938
28501	KTTM	77,930	75,368	497
11908	KTTU	1,393,795	1,109,962	7,324
22208	KTTV	18,130,338	17,373,502	114,630
28521	KTTW	381,013	377,833	2,493
65355	KTTZ-TV	402,714	402,692	2,657
35685	KTUL	1,573,310	1,543,051	10,181
10173	KTUU-TV	397,237	395,237	2,608
77480	KTUZ-TV	1,841,616	1,840,457	12,143
49632	KTVA	353,795	353,563	2,333
34858	KTVB	869,177	862,056	5,688
31437	KTVC	140,329	104,355	689

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
68581	KTVB	4,468,718	4,179,057	27,573
35692	KTVB	607,145	606,961	4,005
49621	KTVF	96,106	95,973	633
5290	KTVH-DT	244,448	199,923	1,319
35693	KTVI	3,025,572	3,022,219	19,941
40993	KTVK	4,837,443	4,825,882	31,841
22570	KTVL	446,924	395,259	2,608
18066	KVTM-TV	303,243	250,287	1,651
59139	KTVN	1,043,407	885,756	5,844
21251	KTVN	220,732	220,235	1,453
35694	KTVQ	197,125	190,529	1,257
50592	KTVR	153,040	56,934	376
23422	KTVT	8,233,312	8,230,812	54,307
35703	KTVU	9,036,813	8,056,602	53,157
35705	KTVW-DT	4,827,096	4,809,796	31,735
68889	KTVX	2,838,210	2,602,217	17,169
55907	KTVZ	249,013	246,030	1,623
18286	KTVZ-TV	84,574	84,044	555
70938	KTWU	1,834,018	1,697,183	11,198
51517	KTXA	8,210,642	8,208,172	54,158
42359	KTXD-TV	8,012,541	8,010,333	52,852
51569	KTXH	7,301,821	7,301,673	48,176
10205	KTXL	9,145,873	6,451,158	42,565
308	KTXS-TV	255,216	254,480	1,679
69315	KUAC-TV	96,544	96,043	634
51233	KUAM-TV	153,836	153,836	1,015
2722	KUAS-TV	1,060,599	1,041,636	6,873
2731	KUAT-TV	1,596,429	1,361,399	8,983
60520	KUBD	15,387	13,666	90
70492	KUBE-TV	7,297,882	7,297,596	48,150
1136	KUCW	2,837,693	2,601,359	17,164
69396	KUED	2,837,687	2,603,895	17,180
69582	KUEN	2,806,982	2,580,258	17,025
82576	KUES	32,094	26,754	177
82585	KUEW	174,491	162,588	1,073
66611	KUFM-TV	203,395	180,333	1,190
169028	KUGF-TV	89,762	89,455	590
68717	KUHM-TV	166,592	156,454	1,032
69269	KUHT	7,288,782	7,288,082	48,087
62382	KUID-TV	482,761	308,950	2,038
169027	KUKL-TV	140,626	131,415	867
35724	KULR-TV	194,552	186,663	1,232
41429	KUMV-TV	70,878	70,314	464
81447	KUNP	133,781	45,006	297
4624	KUNS-TV	4,682,176	4,668,774	30,805
86532	KUOK	28,807	28,738	190
66589	KUON-TV	1,516,440	1,502,853	9,916
86263	KUPB	386,448	386,448	2,550
65535	KUPK	147,290	146,174	964
27431	KUPT	101,334	101,329	669
89714	KUPU	1,019,651	1,010,979	6,670
57884	KUPX-TV	2,824,302	2,598,543	17,145
23074	KUSA	4,470,580	4,195,376	27,681
61072	KUSD-TV	519,419	519,181	3,426
10238	KUSI-TV	3,853,072	3,707,454	24,462
43567	KUSM-TV	155,558	140,071	924
69694	KUTF	1,357,824	1,164,486	7,683
81451	KUTH-DT	2,636,456	2,416,549	15,944
68886	KUTP	4,842,720	4,823,413	31,825
35823	KUTV	2,837,398	2,601,168	17,163
63927	KUVE-DT	1,370,137	1,024,072	6,757
7700	KUVI-DT	1,287,700	1,076,164	7,101
35841	KUVN-DT	7,987,884	7,986,084	52,692
58609	KUVS-DT	4,496,875	4,458,448	29,417
49766	KVAL-TV	1,114,792	948,593	6,259
32621	KVAW	77,028	77,028	508
58795	KVCR-DT	19,073,599	18,308,953	120,802
35846	KVCT	291,432	290,038	1,914
10195	KVCW	2,283,670	2,224,688	14,678
64969	KVDA	3,114,838	3,092,933	20,407
19783	KVEA	18,300,497	17,059,098	112,556

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
12523	KVEO-TV	1,357,022	1,356,984	8,953
2495	KVEW	537,519	524,246	3,459
35852	KVHP	773,592	773,545	5,104
49832	KVIA-TV	1,093,389	1,090,716	7,197
35855	KVIE	11,759,390	8,232,137	54,316
40450	KVIH-TV	139,435	119,247	787
40446	KVII-TV	392,629	391,979	2,586
61961	KVLY-TV	409,018	408,931	2,698
16729	KVMD	15,940,782	15,143,297	99,915
83825	KVME-TV	26,212	22,277	147
25735	KVOA	1,386,793	1,069,725	7,058
35862	KVOS-TV	2,566,816	2,493,670	16,453
69733	KVPT	1,856,508	1,833,293	12,096
55372	KVRR	403,075	403,075	2,659
166331	KVSN-DT	3,136,196	2,698,298	17,803
608	KVTH-DT	319,985	318,374	2,101
2784	KVTJ-DT	1,459,963	1,459,552	9,630
607	KVTN-DT	970,045	963,130	6,355
35867	KVUE	3,458,312	3,395,187	22,401
78910	KVUI	286,007	279,513	1,844
35870	KVVU-TV	2,369,125	2,246,682	14,824
36170	KVYE	404,453	401,890	2,652
35095	KWBA-TV	1,194,062	1,136,172	7,496
78314	KWBM	694,164	676,716	4,465
27425	KWBN	1,016,508	893,029	5,892
76268	KWBQ	1,186,772	1,147,638	7,572
66413	KWCH-DT	897,522	896,232	5,913
71549	KWCM-TV	253,609	245,441	1,619
35419	KWDK	4,867,196	4,778,196	31,527
42007	KWES-TV	506,963	506,675	3,343
50194	KWET	125,090	109,790	724
35881	KWEX-DT	2,871,330	2,864,298	18,899
35883	KWGN-TV	4,368,605	4,155,087	27,415
37099	KWHB	1,056,520	1,056,118	6,968
36846	KWHE	1,015,533	885,013	5,839
26231	KWHY-TV	18,512,098	18,476,669	121,909
35096	KWKB	1,167,302	1,156,465	7,630
162115	KWKS	38,196	37,876	250
12522	KWKT-TV	1,631,788	1,626,721	10,733
21162	KWNB-TV	87,130	85,538	564
67347	KWOG	615,169	608,476	4,015
56852	KWPX-TV	4,894,047	4,809,358	31,732
6885	KWQC-TV	1,082,087	1,072,789	7,078
53318	KWSE	85,141	83,532	551
71024	KWSU-TV	824,342	528,984	3,490
25382	KWTV-DT	1,801,405	1,800,115	11,877
35903	KWTX-TV	2,532,542	2,418,595	15,958
593	KWWL	1,127,596	1,116,266	7,365
84410	KWWT	358,813	358,813	2,367
14674	KWYB	91,657	72,951	481
10032	KWYP-DT	163,309	143,265	945
35920	KXAN-TV	3,476,567	3,408,238	22,488
49330	KXAS-TV	8,080,362	8,077,819	53,297
24287	KXGN-TV	14,265	13,906	92
35954	KXII	2,904,223	2,845,456	18,774
55083	KXLA	18,725,198	17,464,578	115,231
35959	KXLF-TV	301,370	256,892	1,695
53847	KXLN-DT	7,293,696	7,293,476	48,122
35906	KXLT-TV	369,632	369,086	2,435
61978	KXLY-TV	884,722	852,475	5,625
55684	KXMA-TV	42,033	41,964	277
55686	KXMB-TV	164,736	160,794	1,061
55685	KXMC-TV	108,096	100,774	665
55683	KXMD-TV	66,215	66,107	436
47995	KXNE-TV	314,798	313,705	2,070
81593	KXNW	707,066	702,866	4,638
35991	KXRM-TV	2,129,262	1,769,815	11,677
1255	KXTF	157,622	157,168	1,037
25048	KXTV	11,761,085	8,212,854	54,188
35994	KXTX-TV	8,029,815	8,026,902	52,961
62293	KXVA	195,284	195,242	1,288

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
23277	KXVO	1,535,792	1,534,836	10,127
9781	KXXV	2,192,443	2,159,450	14,248
31870	KYAZ	7,248,533	7,248,341	47,825
29086	KYIN	596,722	594,616	3,923
60384	KYLE-TV	367,648	367,562	2,425
33639	KYMA-DT	403,372	400,541	2,643
47974	KYNE-TV	1,089,692	1,089,546	7,189
53820	KYOU-TV	679,167	668,722	4,412
36003	KYTV	1,129,940	1,117,420	7,373
55644	KYTX	956,234	955,262	6,303
13815	KYUR	397,084	395,055	2,607
5237	KYUS-TV	12,525	12,495	82
33752	KYVE	317,640	273,973	1,808
55762	KYVV-TV	66,372	65,857	435
25453	KYW-TV	11,769,848	11,559,783	76,271
69531	KZJL	7,244,427	7,244,235	47,797
69571	KZJO	4,814,396	4,758,120	31,394
61062	KZSD-TV	40,148	34,607	228
33079	KZTV	578,385	575,560	3,798
57292	WAAY-TV	1,644,869	1,570,146	10,360
1328	WABC-TV	22,259,872	21,880,695	144,369
4190	WABE-TV	6,138,218	6,116,631	40,358
43203	WABG-TV	352,521	352,047	2,323
17005	WABI-TV	532,053	512,796	3,383
16820	WABM	1,857,082	1,825,082	12,042
23917	WABW-TV	1,106,011	1,104,788	7,289
19199	WACH	1,448,991	1,442,358	9,517
189358	WACP	9,884,531	9,777,819	64,514
23930	WACS-TV	785,954	782,957	5,166
60018	WACX	5,173,569	5,164,028	34,072
361	WACY-TV	992,148	991,650	6,543
455	WADL	4,727,529	4,719,528	31,139
589	WAFB	1,928,550	1,927,924	12,720
591	WAFF	1,642,889	1,574,162	10,386
70689	WAGA-TV	6,879,310	6,793,067	44,821
48305	WAGM-TV	60,320	59,087	390
37809	WAGV	1,555,609	1,240,816	8,187
706	WAIQ	624,285	622,198	4,105
701	WAKA	796,039	790,015	5,213
4143	WALA-TV	1,431,666	1,428,457	9,425
70713	WALB	794,686	793,085	5,233
60536	WAMI-DT	6,013,991	6,013,991	39,680
70852	WAND	1,345,860	1,344,596	8,872
39270	WANE-TV	1,182,627	1,182,599	7,803
72120	WANF	6,907,445	6,833,668	45,089
64546	WAOW	642,013	633,108	4,177
52073	WAPA-TV	3,310,492	2,963,089	19,550
49712	WAPT	784,962	783,938	5,172
67792	WAQP	2,125,841	2,121,638	13,999
13206	WATC-DT	6,582,231	6,553,248	43,238
71082	WATE-TV	1,971,491	1,724,804	11,380
22819	WATL	6,759,193	6,686,998	44,121
20287	WATM-TV	868,640	735,080	4,850
11907	WATN-TV	1,792,866	1,789,289	11,806
13989	WAVE	1,998,359	1,989,161	13,124
71127	WAVY-TV	2,171,033	2,171,033	14,324
54938	WAWD	661,368	661,287	4,363
65247	WAWV-TV	684,558	679,421	4,483
12793	WAXN-TV	3,101,362	3,092,322	20,403
65696	WBAL-TV	10,637,240	10,226,692	67,476
74417	WBAY-TV	1,275,960	1,275,160	8,414
71085	WBBH-TV	2,368,347	2,368,347	15,626
65204	WBBJ-TV	654,842	651,262	4,297
9617	WBBM-TV	10,069,057	10,062,626	66,393
9088	WBBZ-TV	1,293,109	1,281,368	8,454
70138	WBDT	3,996,184	3,976,552	26,237
51349	WBEC-TV	5,979,674	5,979,674	39,454
10758	WBFF	9,293,641	9,148,848	60,364
12497	WBFS-TV	5,895,133	5,895,133	38,896
6568	WBGU-TV	1,325,871	1,325,871	8,748
81594	WBIF	315,981	315,981	2,085

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
84802	WBIH	734,949	717,111	4,731
717	WBIQ	1,649,738	1,621,834	10,701
46984	WBIR-TV	2,083,590	1,795,576	11,847
67048	WBKB-TV	131,202	123,916	818
34167	WBKI	2,220,753	2,204,001	14,542
4692	WBKO	1,079,438	953,403	6,291
76001	WBKP	54,703	54,532	360
68427	WBMM	595,569	595,314	3,928
73692	WBNA	1,803,465	1,770,024	11,679
23337	WBNG-TV	1,400,072	1,023,266	6,752
71217	WBNS-TV	3,083,491	3,021,775	19,938
72958	WBNX-TV	3,642,087	3,632,499	23,967
71218	WBOC-TV	880,031	880,031	5,806
71220	WBOY-TV	689,705	605,977	3,998
60850	WBPH-TV	11,348,739	10,115,153	66,740
7692	WBPX-TV	7,354,860	7,283,151	48,054
5981	WBRA-TV	1,705,750	1,657,188	10,934
71221	WBRC	1,976,420	1,942,307	12,815
71225	WBRE-TV	2,912,468	2,263,626	14,935
38616	WBRZ-TV	2,299,439	2,298,465	15,165
82627	WBSF	1,816,355	1,811,602	11,953
30826	WBTB	4,973,067	4,828,412	31,858
66407	WBTW	2,060,897	2,044,444	13,489
16363	WBUI	964,071	964,061	6,361
59281	WBUP	124,208	111,143	733
60830	WBUY-TV	1,568,306	1,566,684	10,337
72971	WBXX-TV	2,270,940	2,098,066	13,843
25456	WBZ-TV	8,524,410	8,283,402	54,654
63153	WCAU	11,821,594	11,646,436	76,843
363	WCAV	1,122,505	960,525	6,338
46728	WCAX-TV	793,321	675,201	4,455
39659	WCBB	985,125	952,373	6,284
10587	WCBD-TV	1,336,923	1,336,923	8,821
12477	WCBI-TV	675,135	673,011	4,441
9610	WCBS-TV	23,434,126	22,837,346	150,681
49157	WCCB	4,088,954	4,017,224	26,506
9629	WCCO-TV	4,237,121	4,228,346	27,899
14050	WCCT-TV	5,898,482	5,384,454	35,527
69544	WCCU	673,293	673,293	4,442
3001	WCCV-TV	3,000,204	2,188,016	14,437
23937	WCES-TV	1,138,637	1,137,146	7,503
65666	WCET	3,245,827	3,234,134	21,339
46755	WCFE-TV	468,278	427,164	2,818
71280	WCHS-TV	1,276,867	1,199,053	7,911
42124	WCIA	809,784	809,348	5,340
711	WCIQ	3,433,774	3,244,161	21,405
71428	WCIU-TV	10,205,649	10,199,522	67,296
9015	WCIV	1,341,404	1,341,404	8,851
42116	WCIX	531,709	527,935	3,483
16993	WCJB-TV	1,080,055	1,080,055	7,126
11125	WCLF	4,707,313	4,706,427	31,053
68007	WCLJ-TV	2,538,971	2,537,989	16,746
50781	WCMH-TV	2,988,929	2,947,009	19,444
9917	WCML	229,956	221,000	1,458
9908	WCMU-TV	717,859	708,880	4,677
9922	WCMV	435,637	421,372	2,780
9913	WCMW	107,851	105,871	699
32326	WCNC-TV	4,347,601	4,262,460	28,124
53734	WCNY-TV	1,328,626	1,263,336	8,335
73642	WCOV-TV	916,080	911,398	6,013
40618	WCPB	612,947	612,947	4,044
59438	WCPO-TV	3,461,834	3,448,166	22,751
10981	WCPX-TV	9,906,756	9,905,251	65,355
71297	WCSC-TV	1,188,482	1,188,482	7,842
39664	WCSH	1,844,256	1,625,773	10,727
69479	WCTE	645,441	572,887	3,780
18334	WCTI-TV	1,741,252	1,734,851	11,447
31590	WCTV	1,083,799	1,083,709	7,150
33081	WCTX	7,999,974	7,453,383	49,177
65684	WCVB-TV	8,334,723	8,171,970	53,919
9987	WCVE-TV	1,894,231	1,892,374	12,486

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
83304	WCVI-TV	41,004	40,978	270
34204	WCVN-TV	2,242,264	2,237,912	14,766
9989	WCVW	1,662,141	1,660,801	10,958
73042	WCWF	1,181,564	1,180,880	7,791
35385	WCWG	3,895,811	3,546,156	23,398
29712	WCWJ	1,938,352	1,938,263	12,789
73264	WCWN	1,917,787	1,630,664	10,759
2455	WCYB-TV	2,296,374	1,447,129	9,548
11291	WDAF-TV	2,724,533	2,722,049	17,960
21250	WDAM-TV	507,937	495,331	3,268
22129	WDAY-TV	389,109	389,023	2,567
22124	WDAZ-TV	155,202	154,877	1,022
71325	WDBB	1,874,003	1,841,150	12,148
71326	WDBD	924,445	923,304	6,092
71329	WDBJ	1,603,364	1,421,509	9,379
51567	WDCA	8,945,253	8,890,093	58,657
16530	WDCQ-TV	1,226,421	1,226,397	8,092
30576	WDCW	9,008,590	8,971,597	59,195
54385	WDEF-TV	1,818,758	1,592,644	10,508
32851	WDFX-TV	343,408	343,096	2,264
43846	WDHN	454,174	453,945	2,995
71338	WDIO-DT	345,803	332,242	2,192
714	WDIQ	674,543	625,633	4,128
53114	WDIV-TV	5,555,564	5,555,436	36,655
71427	WDJT-TV	3,315,464	3,306,632	21,817
39561	WDKA	640,692	640,230	4,224
64017	WDKY-TV	1,280,920	1,245,717	8,219
67893	WDLI-TV	4,131,639	4,098,980	27,045
72335	WDPB	652,694	652,694	4,306
83740	WDPM-DT	1,493,282	1,491,552	9,841
1283	WDPN-TV	12,164,952	12,033,746	79,399
6476	WDPX-TV	7,354,860	7,283,151	48,054
28476	WDRB	2,166,593	2,149,625	14,183
12171	WDSC-TV	4,131,441	4,131,441	27,259
17726	WDSE	335,589	320,243	2,113
71353	WDSI-TV	1,155,212	1,094,624	7,222
71357	WDSU	1,746,300	1,746,300	11,522
7908	WDTI	2,314,404	2,313,996	15,268
65690	WDTN	3,998,815	3,979,357	26,256
70592	WDTV	554,217	513,260	3,386
25045	WDVM-TV	3,360,750	2,931,025	19,339
4110	WDWL	2,449,731	2,192,227	14,464
49421	WEAO	3,954,789	3,936,003	25,970
71363	WEAR-TV	1,662,799	1,662,271	10,968
7893	WEAU	1,031,280	993,529	6,555
61003	WEBA-TV	652,051	645,245	4,257
19561	WECN	2,551,597	2,296,482	15,152
48666	WECT	1,284,078	1,284,078	8,472
13602	WEDH	5,419,331	4,792,684	31,622
13607	WEDN	3,520,804	2,654,657	17,515
69338	WEDQ	6,372,341	6,354,538	41,927
21808	WEDU	6,372,341	6,354,538	41,927
13594	WEDW	21,942,405	21,529,106	142,049
13595	WEDY	5,419,331	4,792,684	31,622
24801	WEEK-TV	730,054	729,949	4,816
6744	WEFS	4,115,849	4,115,849	27,156
24215	WEHT	854,000	838,936	5,535
721	WEIQ	1,138,095	1,137,690	7,506
18301	WEIU-TV	442,120	442,040	2,917
69271	WEKW-TV	1,306,163	800,635	5,283
60825	WELF-TV	1,547,836	1,455,263	9,602
26602	WELU	2,052,918	1,847,568	12,190
40761	WEMT	1,708,704	1,169,182	7,714
69237	WENH-TV	4,865,355	4,679,954	30,878
71508	WENY-TV	636,768	501,692	3,310
83946	WEPH	604,510	602,977	3,978
81508	WEPX-TV	945,425	945,425	6,238
25738	WESH	4,917,201	4,906,261	32,372
65670	WETA-TV	9,177,186	9,112,861	60,127
69944	WETK	681,830	571,729	3,772
60653	WETM-TV	844,248	745,266	4,917

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
18252	WETP-TV	2,251,212	1,940,383	12,803
2709	WEUX	396,788	387,527	2,557
72041	WEVV-TV	751,428	750,047	4,949
59441	WEWS-TV	4,098,329	4,061,663	26,799
72052	WEYI-TV	3,802,069	3,734,694	24,642
72054	WFAA	8,238,058	8,226,984	54,282
81669	WFBD	919,012	918,335	6,059
69532	WFDC-DT	9,008,590	8,971,597	59,195
10132	WFFF-TV	644,230	566,681	3,739
25040	WFFT-TV	1,133,445	1,133,031	7,476
11123	WFGC	3,402,762	3,402,762	22,451
6554	WFGX	1,631,714	1,631,224	10,763
13991	WFIE	742,941	741,771	4,894
715	WFIQ	550,070	548,067	3,616
64592	WFLA-TV	6,656,303	6,639,930	43,810
22211	WFLD	10,111,733	10,105,397	66,675
72060	WFLI-TV	1,357,801	1,252,063	8,261
39736	WFLX	6,299,680	6,299,680	41,565
72062	WFMJ-TV	4,291,547	3,802,286	25,087
72064	WFMY-TV	5,399,787	5,364,129	35,393
39884	WFMZ-TV	11,348,739	10,115,153	66,740
83943	WFNA	1,511,431	1,509,839	9,962
47902	WFOR-TV	5,952,062	5,952,062	39,272
11909	WFOX-TV	1,881,740	1,881,740	12,416
40626	WFPT	6,479,421	6,072,020	40,063
21245	WFPX-TV	2,980,937	2,976,800	19,641
25396	WFQX-TV	537,914	533,910	3,523
9635	WFRV-TV	1,313,825	1,300,885	8,583
53115	WFSB	4,799,110	4,417,573	29,147
6093	WFSG	403,233	403,173	2,660
21801	WFSU-TV	592,693	592,676	3,910
11913	WFTC	4,159,690	4,144,073	27,343
64588	WFTS-TV	6,213,173	6,213,039	40,994
16788	WFTT-TV	5,291,296	5,291,296	34,912
72076	WFTV	4,707,940	4,707,940	31,063
70649	WFTX-TV	2,076,721	2,076,721	13,702
60553	WFTY-DT	5,838,625	5,724,691	37,772
25395	WFUP	235,473	234,457	1,547
60555	WFUT-DT	21,842,105	21,428,169	141,383
22108	WFWA	1,071,881	1,071,733	7,071
9054	WFXB	1,448,018	1,447,713	9,552
3228	WFXG	1,126,109	1,115,208	7,358
70815	WFXL	792,863	786,514	5,189
19707	WFXP	556,627	543,130	3,584
24813	WFXR	1,418,873	1,283,217	8,467
6463	WFXT	8,044,623	7,951,492	52,464
22245	WFXU	225,675	225,675	1,489
43424	WFXV	682,282	587,673	3,877
25236	WFXW	240,198	240,193	1,585
41397	WFYI	2,614,535	2,613,865	17,246
53930	WGAL	6,592,850	5,851,154	38,606
2708	WGBA-TV	1,219,315	1,218,972	8,043
24314	WGBC	233,035	232,798	1,536
72099	WGBH-TV	8,264,395	8,151,180	53,781
12498	WGBD-TV	9,984,682	9,984,501	65,878
11113	WGBP-TV	1,964,065	1,956,753	12,911
72098	WGBX-TV	8,354,289	8,184,570	54,002
72096	WGBY-TV	4,556,980	3,838,887	25,329
62388	WGCU	1,789,951	1,789,951	11,810
54275	WGEM-TV	340,572	335,705	2,215
27387	WGEN-TV	47,451	47,451	313
7727	WGFL	958,665	958,665	6,325
25682	WGGB-TV	3,501,457	3,092,700	20,406
11027	WGGN-TV	4,010,515	3,987,566	26,310
9064	WGGT-TV	2,978,169	2,919,596	19,263
72106	WGHP	4,716,324	4,663,025	30,767
710	WGIQ	367,358	367,140	2,422
12520	WGMB-TV	1,815,089	1,814,919	11,975
25683	WGME-TV	1,562,382	1,391,898	9,184
24618	WGNM	765,295	764,308	5,043
72119	WGNO	1,737,340	1,737,340	11,463

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
9762	WGNT	2,218,861	2,218,861	14,640
72115	WGN-TV	10,139,791	10,133,994	66,864
40619	WGPT	570,828	347,754	2,294
65074	WGPX-TV	3,063,562	3,053,879	20,149
64547	WGRZ	1,896,029	1,833,959	12,100
63329	WGTA	1,174,842	1,134,460	7,485
66285	WGTE-TV	2,250,689	2,250,689	14,850
59279	WGTQ	114,517	109,995	726
59280	WGTU	369,755	364,263	2,403
23948	WGTV	6,872,895	6,793,292	44,822
7623	WGTW-TV	830,912	830,818	5,482
24783	WGVK	2,565,756	2,563,031	16,911
24784	WGVU-TV	1,943,807	1,894,218	12,498
21536	WGWG	1,146,502	1,146,502	7,565
56642	WGWW	1,742,591	1,714,951	11,315
58262	WGXA	799,532	798,664	5,270
73371	WHAM-TV	1,381,792	1,333,395	8,798
32327	WHAS-TV	2,065,124	2,034,746	13,425
6096	WHA-TV	1,715,866	1,709,075	11,276
13950	WHBF-TV	1,726,114	1,713,500	11,306
12521	WHBQ-TV	1,735,050	1,714,081	11,310
10894	WHBR	1,425,293	1,424,691	9,400
65128	WHDF	1,720,614	1,666,798	10,998
72145	WHDH	7,993,816	7,899,325	52,120
83929	WHDY	6,334,757	6,334,757	41,797
70041	WHEC-TV	1,322,761	1,278,323	8,434
67971	WHFT-TV	5,976,793	5,976,793	39,435
41458	WHIO-TV	4,041,602	4,033,560	26,613
713	WHIQ	1,383,801	1,329,761	8,774
61216	WHIZ-TV	962,141	885,771	5,844
18780	WHLA-TV	569,415	530,529	3,500
48668	WHLT	481,036	479,959	3,167
24582	WHLV-TV	4,739,820	4,739,820	31,273
37102	WHMB-TV	3,187,327	3,126,458	20,628
61004	WHMC	838,228	838,228	5,531
36117	WHME-TV	1,490,612	1,490,518	9,834
37106	WHNO	1,592,553	1,592,553	10,508
72300	WHNS	2,753,561	2,462,848	16,250
48693	WHNT-TV	1,687,347	1,607,863	10,609
66221	WHO-DT	1,226,093	1,209,327	7,979
6866	WHOI	716,035	715,956	4,724
72313	WHP-TV	4,219,869	3,695,568	24,383
51980	WHPX-TV	5,666,126	5,176,293	34,153
73036	WHRM-TV	537,971	535,112	3,531
25932	WHRO-TV	2,261,464	2,261,381	14,921
68058	WHSG-TV	6,744,093	6,678,392	44,064
4688	WHSV-TV	894,602	760,620	5,019
9990	WHTJ	867,445	743,025	4,902
72326	WHTM-TV	3,349,178	2,923,354	19,288
11117	WHTN	2,283,942	2,273,175	14,998
27772	WHUT-TV	8,785,956	8,745,663	57,704
18793	WHWC-TV	1,205,932	1,152,576	7,605
72338	WHYY-TV	10,984,166	10,590,279	69,875
5360	WIAT	1,959,076	1,921,566	12,678
63160	WIBW-TV	1,312,372	1,263,123	8,334
25684	WICD	1,220,886	1,219,775	8,048
25686	WICS	1,060,412	1,058,572	6,984
24970	WICU-TV	704,263	654,470	4,318
62210	WICZ-TV	1,208,124	932,840	6,155
18410	WIDP	2,258,204	2,022,801	13,346
26025	WIFS	1,664,757	1,659,814	10,951
720	WIIQ	330,593	326,759	2,156
68939	WILL-TV	1,148,587	1,125,681	7,427
6863	WILX-TV	3,505,808	3,321,258	21,914
22093	WINK-TV	2,135,187	2,135,187	14,088
67787	WINM	1,035,236	1,004,998	6,631
41314	WINP-TV	2,918,791	2,870,939	18,942
3646	WIPB	2,098,072	2,097,589	13,840
48408	WIPL	902,112	849,374	5,604
53863	WIPM-TV	2,018,636	1,743,992	740
53859	WIPR-TV	3,164,369	2,988,035	19,715

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
10253	WIPX-TV	2,538,971	2,537,989	16,746
39887	WIRS	962,531	803,553	2,946
71336	WIRT-DT	125,282	123,221	813
13990	WIS	2,873,204	2,819,721	18,605
65143	WISC-TV	1,816,917	1,779,975	11,744
13960	WISE-TV	1,105,600	1,105,444	7,294
39269	WISH-TV	3,141,430	3,093,806	20,413
65680	WISN-TV	3,041,677	3,036,957	20,038
73083	WITF-TV	2,532,625	2,299,838	15,174
73107	WITI	3,149,773	3,140,719	20,722
594	WITN-TV	1,942,458	1,927,751	12,719
61005	WITV	1,002,380	1,002,380	6,614
7780	WIVB-TV	1,911,934	1,834,562	12,104
11260	WIVT	831,941	612,317	4,040
60571	WIWN	3,387,206	3,370,697	22,240
62207	WIYC	673,128	670,480	4,424
73120	WJAC-TV	2,152,162	1,855,359	12,242
10259	WJAL	9,654,785	9,309,845	61,426
50780	WJAR	7,602,846	7,447,435	49,138
35576	WJAX-TV	1,909,321	1,909,321	12,598
27140	WJBF	1,669,785	1,652,861	10,906
73123	WJBK	5,840,177	5,804,131	38,296
37174	WJCL	1,031,857	1,031,857	6,808
73130	WJCT	1,893,148	1,892,490	12,487
29719	WJEB-TV	1,880,192	1,880,192	12,406
65749	WJET-TV	711,412	685,375	4,522
7651	WJFB	2,745,573	2,734,787	18,044
49699	WJFW-TV	281,148	271,274	1,790
73136	WJHG-TV	912,881	905,531	5,975
57826	WJHL-TV	2,035,505	1,463,539	9,656
68519	WJKT	645,594	645,161	4,257
1051	WJLA-TV	9,654,785	9,314,754	61,459
86537	WJLP	22,694,994	22,426,423	147,970
9630	WJMN-TV	158,494	151,938	1,002
61008	WJPM-TV	587,058	586,836	3,872
58340	WJPX	2,861,004	2,653,740	17,509
21735	WJRT-TV	2,831,612	2,583,368	17,045
23918	WJSP-TV	4,678,958	4,643,904	30,640
41210	WJTC	1,517,180	1,516,056	10,003
48667	WJTV	966,513	958,676	6,325
73150	WJW	3,969,148	3,895,876	25,705
61007	WJWJ-TV	1,180,652	1,180,652	7,790
58342	WJWN-TV	1,830,695	1,568,858	2,946
53116	WJXT	1,899,110	1,899,110	12,530
11893	WJXX	1,888,910	1,888,113	12,458
32334	WJYS	9,820,848	9,820,831	64,798
25455	WJZ-TV	10,637,240	10,228,751	67,489
73152	WJZY	4,965,077	4,831,865	31,881
64983	WKAQ-TV	3,259,225	2,914,322	1,101
6104	WKAR-TV	1,713,640	1,709,038	11,276
34171	WKAS	522,877	496,277	3,274
51570	WKBD-TV	5,180,191	5,179,980	34,178
73153	WKBN-TV	4,870,043	4,522,748	29,841
13929	WKBS-TV	1,054,914	914,205	6,032
74424	WKBT-DT	905,659	860,444	5,677
54176	WKBW-TV	2,261,221	2,175,654	14,355
53465	WKCF	5,109,221	5,107,692	33,701
73155	WKEF	3,860,944	3,850,405	25,405
34177	WKGB-TV	444,266	442,639	2,921
34196	WKHA	475,212	372,027	2,455
34207	WKLE	918,947	911,337	6,013
34212	WKMA-TV	558,464	558,150	3,683
71293	WKMG-TV	4,643,692	4,643,692	30,639
34195	WKMJ-TV	1,572,974	1,565,579	10,330
34202	WKMR	457,241	422,772	2,789
34174	WKMU	339,477	339,064	2,237
42061	WKNO	1,649,295	1,647,327	10,869
83931	WKNX-TV	1,778,483	1,548,751	10,219
34205	WKOH	591,189	584,484	3,856
67869	WKOI-TV	3,996,184	3,976,552	26,237
34211	WKON	1,170,361	1,163,470	7,677

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
18267	WKOP-TV	1,641,367	1,465,642	9,670
64545	WKOW	1,999,166	1,978,160	13,052
21432	WKPC-TV	1,620,977	1,613,304	10,645
65758	WKPD	277,245	276,367	1,823
34200	WKPI-TV	552,999	432,287	2,852
27504	WKPT-TV	1,107,992	876,999	5,786
58341	WKPV	981,832	762,182	2,946
11289	WKRC-TV	3,412,677	3,359,970	22,169
73187	WKRQ-TV	1,661,088	1,660,222	10,954
73188	WKRQ-TV	2,843,550	2,823,383	18,629
34222	WKSO-TV	675,800	663,810	4,380
40902	WKTC	1,422,142	1,421,788	9,381
60654	WKTV	1,566,267	1,340,030	8,842
73195	WKYC	4,162,460	4,109,739	27,116
24914	WKYT-TV	1,263,314	1,247,201	8,229
71861	WKYU-TV	447,402	444,471	2,933
34181	WKZT-TV	1,092,295	1,075,603	7,097
18819	WLAE-TV	1,489,518	1,489,518	9,828
36533	WLAJ	4,230,811	4,195,529	27,682
2710	WLAX	480,917	455,361	3,004
68542	WLBZ	930,984	929,897	6,135
39644	WLBZ	374,046	364,463	2,405
69328	WLED-TV	333,929	175,095	1,155
63046	WLEF-TV	201,828	200,259	1,321
73203	WLEX-TV	1,037,124	1,032,416	6,812
37806	WLFB	756,510	656,110	4,329
37808	WLFG	1,555,609	1,240,816	8,187
73204	WLFI-TV	2,422,930	2,397,991	15,822
73205	WLFL	4,154,373	4,151,842	27,394
19777	WLII-DT	2,472,430	2,284,000	15,070
37503	WLIO	1,076,204	1,052,712	6,946
38336	WLIW	21,331,793	21,007,396	138,607
27696	WLJC-TV	1,433,034	1,317,702	8,694
71645	WLJT-DT	382,232	381,417	2,517
53939	WLKY	2,035,700	2,028,397	13,383
11033	WLLA	2,204,047	2,203,715	14,540
1222	WLMA	1,681,703	1,678,515	11,075
17076	WLMB	2,820,328	2,813,733	18,565
68518	WLMT	1,739,879	1,737,416	11,463
22591	WLNE-TV	6,880,185	6,815,475	44,969
74420	WLNS-TV	4,230,811	4,195,529	27,682
73206	WLNY-TV	7,829,527	7,746,153	51,109
84253	WLOO	897,764	896,755	5,917
56537	WLOS	3,337,211	2,748,224	18,133
37732	WLOV-TV	608,778	606,994	4,005
13995	WLOX	1,236,798	1,224,809	8,081
38586	WLPB-TV	1,263,410	1,263,379	8,336
73189	WLPX-TV	1,012,910	963,892	6,360
66358	WLRN-TV	6,010,422	6,010,422	39,657
73226	WLS-TV	10,333,090	10,326,952	68,137
73230	WLTV-DT	5,988,029	5,988,029	39,509
37176	WLTX	1,614,789	1,611,719	10,634
37179	WLTZ	738,023	734,057	4,843
21259	WLUC-TV	103,185	95,367	629
4150	WLUC-TV	1,237,211	1,236,394	8,158
73238	WLVI	7,993,816	7,899,325	52,120
36989	WLVT-TV	11,348,739	10,115,153	66,740
3978	WLWC	3,398,164	3,257,998	21,496
46979	WLWT	3,499,610	3,489,652	23,025
54452	WLXI	3,243,843	3,015,382	19,895
55350	WLYH	3,349,178	2,923,354	19,288
43192	WMAB-TV	389,089	384,767	2,539
43170	WMAE-TV	692,999	663,737	4,379
43197	WMAH-TV	1,302,245	1,301,790	8,589
43176	WMAO-TV	333,490	333,321	2,199
47905	WMAQ-TV	10,069,653	10,068,069	66,429
59442	WMAR-TV	10,025,750	9,879,744	65,187
43184	WMAU-TV	637,434	631,358	4,166
43193	WMAV-TV	1,018,601	1,018,556	6,720
43169	WMAW-TV	731,384	716,614	4,728
46991	WMAZ-TV	1,238,176	1,180,117	7,786

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
66398	WMBB	990,632	964,744	6,365
43952	WMBC-TV	22,446,503	21,778,765	143,696
42121	WMBD-TV	720,722	720,669	4,755
83969	WMBF-TV	526,232	526,232	3,472
60829	WMCF-TV	644,916	641,833	4,235
9739	WMCN-TV	10,984,166	10,590,279	69,875
19184	WMC-TV	2,057,112	2,053,563	13,549
189357	WMDE	6,933,795	6,802,466	44,883
73255	WMDN	259,822	259,616	1,713
16455	WMDT	790,315	790,315	5,214
39656	WMEA-TV	965,365	911,355	6,013
39648	WMEB-TV	411,335	396,677	2,617
70537	WMEC	199,187	198,698	1,311
39649	WMED-TV	28,850	27,884	184
39662	WMEM-TV	66,343	64,625	426
41893	WMFD-TV	1,637,011	1,379,386	9,101
41436	WMFP	6,230,964	5,959,061	39,318
61111	WMGM-TV	830,912	830,818	5,482
43847	WMGT-TV	614,625	614,040	4,051
73263	WMHT	1,729,302	1,559,066	10,287
68545	WMLW-TV	1,863,951	1,863,679	12,297
53819	WMOR-TV	6,400,456	6,400,333	42,229
81503	WMOW	122,110	106,904	705
65944	WMPB	8,059,368	7,940,127	52,389
43168	WMPN-TV	843,756	841,772	5,554
65942	WMPT	9,500,117	9,442,413	62,301
60827	WMPV-TV	1,565,537	1,564,599	10,323
10221	WMSN-TV	2,030,916	2,010,636	13,266
2174	WMTJ	2,764,573	2,492,464	16,445
6870	WMTV	1,628,641	1,625,206	10,723
73288	WMTW	2,041,342	1,737,673	11,465
23935	WMUM-TV	926,604	921,419	6,080
73292	WMUR-TV	5,652,739	5,453,759	35,984
42663	WMVS	3,216,887	3,155,770	20,822
42665	WMVT	3,216,887	3,155,770	20,822
81946	WMWC-TV	935,338	912,437	6,020
56548	WMYA-TV	1,808,659	1,723,755	11,373
74211	WMYD	5,840,155	5,839,880	38,532
20624	WMYT-TV	4,965,077	4,831,865	31,881
25544	WMYV	4,406,813	4,379,408	28,895
73310	WNAB	2,600,886	2,591,235	17,097
73311	WNAC-TV	7,817,084	7,459,610	49,219
47535	WNBC	23,283,577	22,722,761	149,925
83965	WNBW-DT	1,557,530	1,550,637	10,231
72307	WNCF	665,079	658,994	4,348
50782	WNCN	4,201,973	4,186,944	27,625
57838	WNCT-TV	2,034,787	1,975,930	13,037
41674	WNDU-TV	1,901,588	1,870,311	12,340
28462	WNDY-TV	3,141,430	3,093,806	20,413
71928	WNED-TV	1,408,141	1,390,745	9,176
60931	WNEH	1,389,794	1,383,193	9,126
41221	WNEM-TV	1,437,726	1,434,104	9,462
49439	WNEO	3,343,598	3,265,373	21,545
73318	WNEP-TV	3,472,501	2,879,994	19,002
18795	WNET	22,428,695	21,915,470	144,598
51864	WNEU	7,676,529	7,606,661	50,189
23942	WNGH-TV	6,461,522	6,281,764	41,447
67802	WNIN	907,713	891,200	5,880
41671	WNIT	1,335,767	1,335,767	8,813
48457	WNJB	22,145,547	21,374,668	141,030
48477	WNJN	22,145,547	21,374,668	141,030
48481	WNJS	7,729,626	7,710,589	50,874
48465	WNJT	7,729,626	7,710,589	50,874
73333	WNJU	23,283,577	22,722,761	149,925
73336	WNJX-TV	1,446,990	1,265,826	905
61217	WNKY	414,184	412,652	2,723
71905	WNLO	1,911,934	1,834,562	12,104
4318	WNMU	178,504	177,692	1,172
73344	WNNE	801,186	684,501	4,516
54280	WNOL-TV	1,730,074	1,730,074	11,415
71676	WNPB-TV	2,094,971	1,923,306	12,690

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
62137	WNPI-DT	159,208	154,143	1,017
41398	WNPT	2,692,492	2,657,273	17,533
28468	WNPX-TV	2,494,581	2,470,662	16,301
61009	WNSC-TV	2,860,897	2,853,300	18,826
61010	WNTV	2,775,252	2,572,161	16,971
16539	WNTZ-TV	328,336	327,661	2,162
7933	WNUV	9,944,268	9,735,378	64,234
9999	WNVC	867,445	743,025	4,902
10019	WNVY	1,894,231	1,892,374	12,486
73354	WNWO-TV	2,915,507	2,915,507	19,237
136751	WNYA	1,932,105	1,656,014	10,926
30303	WNYB	1,784,805	1,758,025	11,599
6048	WNYE-TV	20,693,079	20,445,674	134,901
34329	WNYI	1,609,642	1,329,569	8,772
67784	WNYO-TV	1,449,480	1,428,169	9,423
73363	WNYT	1,691,742	1,539,006	10,154
22206	WNYW	21,377,740	21,043,915	138,848
69618	WOAI-TV	3,063,753	3,050,610	20,128
66804	WOAY-TV	536,548	414,046	2,732
41225	WOFL	4,897,034	4,891,577	32,275
70651	WOGX	1,262,333	1,262,333	8,329
8661	WOI-DT	1,278,698	1,277,340	8,428
39746	WOIO	3,819,462	3,739,439	24,673
71725	WOLE-DT	1,581,955	1,411,809	5,385
73375	WOLF-TV	3,025,477	2,531,097	16,700
60963	WOLO-TV	2,854,959	2,814,886	18,573
36838	WOOD-TV	2,637,147	2,631,110	17,360
67602	WOPX-TV	4,677,102	4,676,992	30,859
64865	WORA-TV	3,172,055	2,933,387	19,354
73901	WORO-DT	2,847,102	2,661,536	17,561
60357	WOST	1,055,465	918,659	6,061
66185	WOSU-TV	3,073,523	3,013,857	19,885
131	WOTF-TV	4,204,625	4,204,625	27,742
10212	WOTV	2,493,328	2,492,908	16,448
50147	WOUB-TV	739,667	721,384	4,760
50141	WOUC-TV	1,680,457	1,618,502	10,679
23342	WOWK-TV	1,098,995	1,028,502	6,786
65528	WOWT	1,516,978	1,514,052	9,990
31570	WPAN	1,392,393	1,392,261	9,186
51988	WPBF	3,601,603	3,601,603	23,763
21253	WPBN-TV	452,157	440,310	2,905
62136	WPBS-TV	332,147	296,972	1,959
13456	WPBT	5,976,331	5,976,331	39,432
13924	WPCB-TV	2,920,794	2,802,648	18,492
64033	WPCH-TV	6,826,973	6,747,200	44,518
4354	WPCT	207,688	207,286	1,368
17012	WPDE-TV	1,845,347	1,838,747	12,132
52527	WPEC	6,332,850	6,332,850	41,784
84088	WPFO	1,390,230	1,272,952	8,399
54728	WPGA-TV	575,813	575,578	3,798
60820	WPGD-TV	2,787,190	2,772,517	18,293
73875	WPGH-TV	3,209,933	3,099,658	20,452
2942	WPGX	448,453	445,686	2,941
73879	WPHL-TV	10,944,731	10,756,717	70,973
73881	WPIX	22,259,872	21,818,842	143,961
69880	WPKD-TV	3,366,547	3,181,216	20,990
53113	WPLG	6,165,413	6,165,413	40,679
11906	WPMI-TV	1,609,741	1,609,491	10,619
10213	WPMT	2,532,625	2,299,838	15,174
18798	WPNE-TV	1,210,150	1,209,366	7,979
73907	WPNT	3,148,917	3,050,465	20,127
28480	WPPT	11,348,739	10,115,153	66,740
51984	WPPX-TV	8,429,105	8,212,096	54,183
47404	WPRI-TV	7,754,340	7,480,561	49,357
51991	WPSD-TV	852,232	848,332	5,597
12499	WPSG	11,342,493	11,068,585	73,031
66219	WPSU-TV	1,016,983	842,529	5,559
73905	WPTA	1,136,029	1,135,873	7,494
25067	WPTD	3,535,155	3,522,151	23,239
25065	WPTO	3,080,289	3,066,947	20,236
59443	WPTV-TV	6,414,108	6,414,108	42,320

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
57476	WPTZ	801,186	684,501	4,516
8616	WPVI-TV	11,997,071	11,834,791	78,086
48772	WPWR-TV	10,111,733	10,105,397	66,675
51969	WPXA-TV	7,486,662	7,341,812	48,441
71236	WPXC-TV	1,812,411	1,812,329	11,958
5800	WPXD-TV	5,357,614	5,357,504	35,349
37104	WPXE-TV	3,105,562	3,094,581	20,418
48406	WPXG-TV	2,760,323	2,697,351	17,797
73312	WPXH-TV	1,558,487	1,543,110	10,181
73910	WPXI	3,270,399	3,179,997	20,982
2325	WPXJ-TV	2,383,753	2,319,308	15,303
52628	WPXK-TV	1,897,932	1,672,850	11,037
21729	WPXL-TV	1,738,354	1,738,354	11,470
48608	WPXM-TV	5,673,283	5,673,283	37,432
73356	WPXN-TV	22,193,311	21,756,322	143,548
27290	WPXP-TV	6,117,297	6,117,297	40,362
50063	WPXQ-TV	3,398,164	3,257,998	21,496
70251	WPXR-TV	1,361,522	1,199,794	7,916
40861	WPXS	2,313,093	2,228,599	14,704
53065	WPXT	1,058,317	1,005,248	6,633
37971	WPXU-TV	764,835	764,835	5,046
67077	WPXV-TV	1,997,620	1,997,620	13,180
74091	WPXW-TV	8,918,745	8,866,240	58,499
21726	WPXX-TV	1,563,942	1,560,675	10,297
73319	WQAD-TV	1,077,293	1,065,179	7,028
65130	WQCW	1,234,953	1,165,995	7,693
71561	WQEC	177,193	175,191	1,156
41315	WQED	3,491,971	3,385,114	22,335
3255	WQHA	2,936,821	2,543,288	16,781
60556	WQHS-DT	3,982,203	3,936,334	25,972
53716	WQLN	573,688	553,172	3,650
52075	WQMY	403,099	246,363	1,626
64550	WQOW	383,460	372,929	2,461
5468	WQPT-TV	928,221	922,909	6,089
64690	WQPX-TV	1,624,976	1,207,503	7,967
52408	WQRF-TV	1,384,090	1,360,850	8,979
2175	WQTO	2,533,848	1,714,503	4,010
8688	WRAL-TV	4,258,430	4,255,027	28,075
10133	WRAY-TV	4,701,102	4,682,210	30,893
64611	WRAZ	4,206,845	4,204,439	27,741
136749	WRBJ-TV	1,029,422	1,026,759	6,775
3359	WRBL	1,573,722	1,534,121	10,122
57221	WRBU	2,964,043	2,960,986	19,537
54940	WRBW	4,929,252	4,926,807	32,507
59137	WRCB	1,674,932	1,436,942	9,481
47904	WRC-TV	9,040,003	8,996,367	59,358
54963	WRDC	4,380,924	4,374,069	28,860
55454	WRDQ	4,765,929	4,765,929	31,446
73937	WRDW-TV	1,630,465	1,580,144	10,426
66174	WREG-TV	1,645,112	1,638,826	10,813
61011	WRET-TV	2,775,252	2,572,161	16,971
73940	WREX	2,367,561	2,071,361	13,667
54443	WRFB	2,361,435	2,105,790	1,101
73942	WRGB	1,773,206	1,559,637	10,290
411	WRGT-TV	3,563,572	3,528,799	23,283
74416	WRIC-TV	2,264,724	2,197,233	14,497
61012	WRJA-TV	1,227,284	1,220,205	8,051
412	WRLH-TV	2,215,949	2,152,568	14,203
61013	WRLK-TV	1,268,677	1,267,713	8,364
43870	WRLM	3,954,789	3,936,003	25,970
74156	WRNN-TV	21,146,732	20,904,564	137,928
73964	WROC-TV	1,210,157	1,192,546	7,868
159007	WRPT	108,521	108,009	713
20590	WRPX-TV	2,980,937	2,976,800	19,641
62009	WRSP-TV	1,062,091	1,060,251	6,996
40877	WRTV	3,148,448	3,125,475	20,622
15320	WRUA	2,624,204	2,339,222	15,434
71580	WRXY-TV	2,114,529	2,114,529	13,952
48662	WSAV-TV	1,094,897	1,094,884	7,224
6867	WSAW-TV	657,843	651,328	4,297
36912	WSAZ-TV	1,173,019	1,103,266	7,279

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
56092	WSBE-TV	8,044,866	7,776,757	51,311
73982	WSBK-TV	7,834,658	7,766,985	51,247
72053	WSBS-TV	47,386	47,386	313
73983	WSBT-TV	1,790,673	1,780,628	11,749
23960	WSB-TV	6,772,503	6,695,450	44,177
69446	WSCG	961,649	961,649	6,345
64971	WSCV	6,029,382	6,029,382	39,782
70536	WSEC	517,830	517,364	3,414
49711	WSEE-TV	585,062	562,271	3,710
21258	WSES	1,905,067	1,866,312	12,314
73988	WSET-TV	1,587,650	1,345,990	8,881
13993	WSFA	1,206,335	1,168,069	7,707
11118	WSFJ-TV	1,911,871	1,902,328	12,552
10203	WSFL-TV	5,890,244	5,890,244	38,864
72871	WSFX-TV	1,088,964	1,088,964	7,185
73999	WSIL-TV	650,734	647,093	4,270
4297	WSIU-TV	994,418	936,746	6,181
74007	WSJV	1,686,953	1,680,493	11,088
78908	WSKA	530,610	416,302	2,747
74034	WSKG-TV	866,172	616,130	4,065
76324	WSKY-TV	2,003,325	2,002,894	13,215
776220	WSLN	3,269,796	3,020,118	19,927
57840	WSLS-TV	1,436,974	1,276,869	8,425
21737	WSMH	2,350,370	2,335,477	15,409
41232	WSMV-TV	2,883,773	2,837,323	18,721
70119	WSNS-TV	10,069,653	10,068,069	66,429
74070	WSOC-TV	4,156,321	4,085,565	26,957
66391	WSPA-TV	3,717,232	3,549,667	23,421
64352	WSPX-TV	1,285,581	1,167,040	7,700
17611	WSRE	1,490,766	1,489,946	9,831
63867	WSST-TV	312,974	312,260	2,060
60341	WSTE-DT	3,284,058	3,220,155	21,247
21252	WSTM-TV	1,437,543	1,367,590	9,023
11204	WSTR-TV	3,424,743	3,411,973	22,512
19776	WSUR-DT	3,276,102	3,182,722	5,385
2370	WSVI	41,004	41,004	271
63840	WSVN	6,165,386	6,165,386	40,679
73374	WSWB	1,516,774	1,088,360	7,181
28155	WSWG	389,103	389,030	2,567
71680	WSWP-TV	849,038	633,378	4,179
74094	WSYM-TV	1,607,593	1,607,277	10,605
73113	WSYR-TV	1,314,500	1,226,575	8,093
40758	WSYT	1,962,530	1,731,744	11,426
56549	WSYX	2,871,413	2,825,664	18,644
65681	WTAE-TV	2,985,875	2,865,692	18,908
23341	WTAJ-TV	1,158,024	925,907	6,109
4685	WTAP-TV	489,083	469,004	3,094
416	WTAT-TV	1,284,148	1,284,148	8,473
67993	WTBY-TV	16,997,114	16,897,718	111,491
29715	WTCE-TV	2,964,583	2,964,583	19,560
65667	WTCI	1,276,295	1,159,269	7,649
67786	WTCT	590,643	586,819	3,872
28954	WTCV	2,861,004	2,653,740	17,509
74422	WTEN	1,913,356	1,621,808	10,701
9881	WTGL	4,516,827	4,516,827	29,802
27245	WTGS	1,064,292	1,064,066	7,021
70655	WTHI-TV	966,268	914,388	6,033
70162	WTHR	3,175,603	3,122,761	20,604
147	WTIC-TV	5,397,501	4,767,795	31,458
26681	WTIN-TV	3,277,279	3,162,469	905
66536	WTIU	1,690,704	1,689,678	11,148
1002	WTJP-TV	2,037,103	2,002,301	13,211
4593	WTJR	316,974	316,852	2,091
70287	WTJX-TV	112,125	104,561	690
47401	WTKR	2,242,929	2,242,846	14,798
82735	WTLF	883,350	883,326	5,828
23486	WTLH	1,082,589	1,082,542	7,143
67781	WTLJ	1,738,667	1,736,853	11,460
65046	WTLV	2,041,165	2,022,822	13,347
74098	WTMJ-TV	3,139,304	3,123,411	20,608
74109	WTNH	7,999,974	7,453,267	49,177

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
19200	WTNZ	1,790,817	1,598,570	10,547
590	WTOC-TV	1,061,993	1,061,993	7,007
74112	WTOG	6,239,245	6,236,871	41,151
4686	WTOK-TV	391,847	386,112	2,548
13992	WTOL	4,534,147	4,527,590	29,873
21254	WTOM-TV	120,159	116,524	769
74122	WTOV-TV	3,866,114	3,605,421	23,789
82574	WTPC-TV	2,138,494	2,132,635	14,071
86496	WTPX-TV	258,246	258,154	1,703
6869	WTRF-TV	2,938,363	2,562,114	16,905
67798	WTSF	879,853	811,994	5,358
11290	WTSP	6,538,906	6,515,239	42,988
4108	WTTA	6,656,303	6,639,930	43,810
74137	WTTE	2,926,672	2,885,004	19,035
22207	WTTG	8,945,253	8,890,093	58,657
56526	WTTK	3,074,975	3,055,143	20,158
74138	WTTQ	1,966,252	1,931,949	12,747
56523	WTTV	2,752,635	2,749,080	18,138
10802	WTTW	9,929,487	9,929,071	65,512
74148	WTVA	807,017	794,561	5,243
22590	WTVB	1,658,814	1,434,931	9,468
8617	WTVB	4,201,042	4,188,018	27,633
55305	WTVB	5,368,807	5,365,301	35,400
36504	WTVF	2,816,921	2,798,755	18,466
74150	WTVG	4,440,934	4,429,742	29,227
74151	WTVH	1,375,016	1,313,054	8,664
10645	WTVI	3,286,073	3,261,428	21,519
63154	WTVJ	6,009,434	6,009,434	39,650
52280	WTVK	7,403,075	7,395,979	48,799
595	WTVM	1,577,223	1,471,502	9,709
72945	WTVQ	1,413,778	1,400,377	9,240
28311	WTVR	660,258	660,214	4,356
51597	WTVQ-DT	1,060,102	1,054,409	6,957
57832	WTVR-TV	1,998,729	1,990,377	13,133
16817	WTVS	5,607,125	5,606,929	36,995
68569	WTVT	6,511,462	6,491,829	42,833
3661	WTVW	839,062	833,035	5,496
35575	WTVX	3,558,645	3,556,727	23,467
4152	WTVY	1,032,612	1,029,898	6,795
40759	WTVZ-TV	2,246,928	2,246,845	14,825
66908	WTVZ-TV	1,078,213	1,078,166	7,114
20426	WTVZ	716,304	710,680	4,689
81692	WTVZ	1,529,924	1,528,555	10,085
51568	WTVZ-TV	11,330,716	11,023,958	72,736
41065	WTVZ-TV	1,071,056	1,070,908	7,066
8532	WUAB	3,819,462	3,739,439	24,673
12855	WUCF-TV	4,516,827	4,516,827	29,802
36395	WUCW	4,213,867	4,205,494	27,748
69440	WUFT	1,524,792	1,524,792	10,061
413	WUHF	1,161,377	1,157,795	7,639
8156	WUJA	2,449,731	2,192,227	14,464
69080	WUNC-TV	4,701,102	4,682,210	30,893
69292	WUNC-TV	1,526,704	1,526,704	10,073
69114	WUNE-TV	3,449,284	2,886,515	19,045
69300	WUNF-TV	2,825,704	2,517,064	16,608
69124	WUNG-TV	4,065,099	4,049,218	26,717
60551	WUNI	7,755,236	7,627,170	50,324
69332	WUNJ-TV	1,224,449	1,224,449	8,079
69149	WUNK-TV	2,105,575	2,099,533	13,853
69360	WUNL-TV	3,243,843	3,015,382	19,895
69444	WUNM-TV	1,370,547	1,370,547	9,043
69397	WUNP-TV	1,488,708	1,474,989	9,732
69416	WUNU	1,212,006	1,210,875	7,989
83822	WUNW	2,012,283	1,476,883	9,744
6900	WUPA	6,845,271	6,764,030	44,629
13938	WUPL	1,833,116	1,833,116	12,095
10897	WUPV	2,142,407	2,122,016	14,001
19190	WUPW	2,136,541	2,135,020	14,087
23128	WUPX-TV	1,182,585	1,166,267	7,695
65593	WUSA	9,654,785	9,309,845	61,426
4301	WUSI-TV	320,658	320,658	2,116

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
60552	WUTB	9,293,641	9,148,848	60,364
30577	WUTF-TV	8,479,857	8,266,141	54,540
57837	WUTR	511,394	470,311	3,103
415	WUTV	1,611,128	1,579,265	10,420
16517	WUVC-DT	4,224,285	4,208,453	27,767
48813	WUVG-DT	6,908,879	6,834,542	45,094
3072	WUVN	1,236,426	1,156,397	7,630
60560	WUVP-DT	10,944,731	10,756,717	70,973
9971	WUXP-TV	2,749,827	2,737,094	18,059
417	WVAH-TV	1,292,710	1,222,075	8,063
23947	WVAN-TV	1,118,534	1,117,845	7,376
65387	WVBT	1,964,109	1,964,109	12,959
72342	WVCY-TV	3,149,773	3,140,719	20,722
60559	WVEA-TV	5,324,315	5,322,343	35,117
74167	WVEC	2,189,627	2,184,435	14,413
5802	WVEN-TV	4,749,513	4,749,513	31,337
61573	WVEO	962,531	803,553	2,946
69946	WVER	903,858	770,412	5,083
10976	WVFX	688,514	596,278	3,934
47929	WVIA-TV	3,472,501	2,879,994	19,002
3667	WVII-TV	368,499	348,813	2,301
70309	WVIR-TV	2,140,100	2,107,081	13,903
74170	WVIT	5,920,252	5,425,459	35,797
18753	WVIZ	3,694,957	3,687,740	24,332
70021	WVLA-TV	1,969,063	1,969,000	12,991
81750	WVLR	1,483,484	1,376,091	9,079
35908	WVLT-TV	1,983,974	1,714,780	11,314
74169	WVNS-TV	889,675	560,472	3,698
11259	WVNY	755,448	673,828	4,446
29000	WVOZ-TV	981,832	762,182	2,946
71657	WVPB-TV	939,383	910,465	6,007
60111	WVPT	995,523	887,449	5,855
70491	WVPX-TV	4,131,639	4,098,980	27,045
66378	WVPY	995,523	887,449	5,855
67190	WVSN	2,593,148	2,271,512	14,987
69940	WVTB	468,294	246,240	1,625
74173	WVTM-TV	2,101,947	2,026,895	13,373
74174	WVTV	3,130,664	3,122,630	20,603
77496	WVUA	2,305,621	2,250,337	14,848
4149	WVUE-DT	1,759,779	1,759,779	11,611
4329	WVUT	267,636	267,555	1,765
74176	WVVA	997,556	690,651	4,557
3113	WVXF	70,673	66,853	441
12033	WWAY	1,328,366	1,328,366	8,765
30833	WWBT	2,109,206	2,074,930	13,690
20295	WWCP-TV	2,798,717	2,540,105	16,760
24812	WWCW	1,390,908	1,210,482	7,987
23671	WWDP	6,230,964	5,959,061	39,318
21158	WWHO	2,994,400	2,952,760	19,482
14682	WWJE-DT	7,755,236	7,627,170	50,324
65919	WWJS	3,798,882	3,731,768	24,622
72123	WWJ-TV	5,653,566	5,653,219	37,300
166512	WWJX	524,625	524,579	3,461
6868	WWLP	3,866,407	3,097,621	20,438
74192	WWL-TV	1,908,335	1,908,335	12,591
3133	WWMB	1,596,320	1,591,501	10,501
74195	WWMT	2,667,986	2,657,016	17,531
68851	WWNY-TV	368,613	341,101	2,251
74197	WWOR-TV	21,146,732	20,904,564	137,928
65943	WWPB	3,531,585	3,086,500	20,365
23264	WWPX-TV	2,612,045	2,544,163	16,786
68547	WWRS-TV	2,376,549	2,354,442	15,535
61251	WWSB	3,830,838	3,830,838	25,276
23142	WWSI	11,821,594	11,646,436	76,843
16747	WWTI	195,127	188,538	1,244
998	WWTO-TV	6,837,732	6,837,732	45,115
26994	WWTV	1,047,227	1,032,448	6,812
84214	WWTW	1,529,924	1,528,555	10,085
26993	WWUP-TV	114,688	108,690	717
23338	WXBU	4,219,869	3,695,568	24,383
61504	WXCW	2,000,927	2,000,927	13,202

TABLE 8—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
61084	WXEL-TV	5,976,331	5,976,331	39,432
60539	WXFT-DT	10,333,090	10,326,952	68,137
23929	WXGA-TV	618,176	616,843	4,070
51163	WXIA-TV	7,067,151	6,920,534	45,662
53921	WXII-TV	3,895,811	3,546,156	23,398
146	WXIN	3,066,589	3,043,020	20,078
39738	WXIX-TV	3,033,449	3,023,049	19,946
414	WXLV-TV	4,920,177	4,882,710	32,216
68433	WXMI	2,110,083	2,109,607	13,919
64549	WXOW	433,343	422,605	2,788
6601	WXPX-TV	5,414,068	5,411,832	35,707
74215	WXTV-DT	21,842,105	21,428,169	141,383
12472	WXTX	745,811	742,438	4,899
11970	WXXA-TV	1,691,753	1,553,272	10,248
57274	WXXI-TV	1,192,140	1,176,310	7,761
53517	WXXV-TV	1,235,520	1,233,511	8,139
10267	WXYZ-TV	5,716,967	5,716,632	37,718
77515	WYCI	32,321	21,447	142
70149	WYCW	3,717,232	3,549,667	23,421
62219	WYDC	542,984	435,924	2,876
18783	WYDN	2,760,323	2,697,351	17,797
35582	WYDO	1,340,990	1,340,990	8,848
25090	WYES-TV	2,002,806	2,002,459	13,212
53905	WYFF	2,836,376	2,609,544	17,218
49803	WYIN	7,062,511	7,062,511	46,598
24915	WYMT-TV	1,144,051	819,069	5,404
17010	WYOU	2,912,468	2,246,394	14,822
77789	WYOW	94,927	94,486	623
13933	WYPX-TV	1,547,670	1,434,147	9,463
4693	WYTV	4,870,043	4,522,748	29,841
5875	WYZZ-TV	1,008,995	1,002,743	6,616
15507	WZBJ	1,603,364	1,421,509	9,379
28119	WZDX	1,714,034	1,633,019	10,775
70493	WZME	21,320,488	20,875,035	137,733
81448	WZMQ	73,784	73,510	485
71871	WZPX-TV	2,165,413	2,165,333	14,287
136750	WZRB	1,007,172	1,006,731	6,642
418	WZTV	2,743,270	2,733,978	18,039
83270	WZVI	64,187	63,279	418
19183	WZVN-TV	2,331,155	2,331,155	15,381
49713	WZZM	1,678,220	1,652,095	10,901

¹ Call signs WIPM and WIPR are stations in Puerto Rico that are linked together with a total fee of \$20,455.

² Call signs WNJX and WAPA are stations in Puerto Rico that are linked together with a total fee of \$20,455.

³ Call signs WKAQ and WORA are stations in Puerto Rico that are linked together with a total fee of \$20,455.

⁴ Call signs WOLE and WLII are stations in Puerto Rico that are linked together with a total fee of \$20,455.

⁵ Call signs WVEO and WTCV are stations in Puerto Rico that are linked together with a total fee of \$20,455.

⁶ Call signs WJPX and WJWN are stations in Puerto Rico that are linked together with a total fee of \$20,455.

⁷ Call signs WAPA and WTIN are stations in Puerto Rico that are linked together with a total fee of \$20,455.

⁸ Call signs WSUR and WLII are stations in Puerto Rico that are linked together with a total fee of \$20,455.

⁹ Call signs WVOZ and WTCV are stations in Puerto Rico that are linked together with a total fee of \$20,455.

¹⁰ Call signs WJPX and WKPV are stations in Puerto Rico that are linked together with a total fee of \$20,455.

¹¹ Call signs WMTJ and WQTO are stations in Puerto Rico that are linked together with a total fee of \$20,455.

¹² Call signs WIRS and WJPX are stations in Puerto Rico that are linked together with a total fee of \$20,455.

¹³ Call signs WRFB and WORA are stations in Puerto Rico that are linked together with a total fee of \$20,455.

Table 9—FY 2023 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the

Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee category	Annual regulatory fee (U.S. \$s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.

Fee category	Annual regulatory fee (U.S. \$s)
Aviation (Aircraft) (per station) (47 CFR part 87)	10.
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers)	.16.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	700.
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	700.
AM Radio Construction Permits	620.
FM Radio Construction Permits	1,085.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	\$.007799.
	See Appendix G of FY 2023 R&O for fee amounts due, also available at https://www.fcc.gov/licensing-databases/fees/regulatory-fees .
Digital TV Construction Permits	5,100.
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	260.
CARS (47 CFR part 78)	1,720.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS)	1.23.
Interstate Telecommunication Service Providers (per revenue dollar)	.00540.
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.13.
Earth Stations (47 CFR part 25)	575.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	117,580.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	347,755.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	130,405.
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	\$26.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2023 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤10,000	\$595	\$430	\$370	\$410	\$650	\$745
10,001–25,000	990	715	620	680	1,085	1,240
25,001–75,000	1,485	1,075	930	1,020	1,630	1,860
75,001–150,000	2,230	1,610	1,395	1,530	2,440	2,790
150,001–500,000	3,345	2,415	2,095	2,300	3,665	4,190
500,001–1,200,000	5,010	3,620	3,135	3,440	5,490	6,275
1,200,001–3,000,000	7,525	5,435	4,710	5,170	8,245	9,425
3,000,001–6,000,000	11,275	8,145	7,060	7,745	12,360	14,125
>6,000,000	16,920	12,220	10,595	11,620	18,545	21,190

FY 2023 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2022)	Fee ratio (units)	FY 2023 regulatory fees
Less than 50 Gbps	.0625	\$7,680
50 Gbps or greater, but less than 250 Gbps	.125	15,355
250 Gbps or greater, but less than 1,500 Gbps	.25	30,705
1,500 Gbps or greater, but less than 3,500 Gbps	.5	61,410
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	122,815
6,500 Gbps or greater	2.0	245,630

VI. Initial Regulatory Flexibility Analysis

As required by the RFA the Commission has prepared this IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM*. Written comments are requested on this IRFA. Comments must be identified as

responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the SBA.

A. Need for, and Objectives of, the Proposed Rules

68. For FY 2024, the Commission is required to collect \$390,192,000 in regulatory fees, an amount equal to our annual salaries and expenses appropriation, pursuant to section 9 of the Communications Act and the Commission's FY 2024 Further Consolidation Appropriations Act. The

Commission's methodology for assessing regulatory fees must "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." The total amount the Commission must collect in an offsetting collection generally changes each fiscal year, and payors' regulatory fees will also typically change each fiscal year as a mathematical consequence of the changes in the total amount to be collected, the number of FTEs, and projected unit estimates for each regulatory fee category. In the annual *NPRM*, we seek comment on the Commission's proposed methodology and regulatory fees for FY 2024, as set forth in Tables 3, 4, and 7 of the *NPRM*. In 2023, the Commission eliminated the International Bureau, established a new Space Bureau and a new Office of International Affairs, and reallocated the authorities and functions of the International Bureau to the Space Bureau and the Office of International Affairs. In light of these actions, for FY 2024, we reviewed the FY 2023 reallocations to determine if any changes are warranted, and propose to slightly revise the FY 2023 reallocations to the core bureaus, including the new Space Bureau and the new Office of International Affairs.

69. We also seek comment on several additional regulatory fee issues, including: (i) the calculation of television broadcaster regulatory fees; (ii) how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; (iii) the end of temporary relief measures we implemented in response to the COVID-19 pandemic; (iv) our proposal to discontinue the Commission's presumption that broadcast stations that are dark or were recently dark or bankrupt are experiencing financial hardship sufficient to justify waiver of their regulatory fees; and (v) ways in which the Commission might assist regulatory fee payors in meeting their annual regulatory fee obligations.

B. Legal Basis

70. The proposed action is authorized pursuant to sections 4(i), 4(j), 9, 9A, and 303(r) of the Communications Act.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

71. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of

small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the SBA. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

72. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

73. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

74. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with

enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data.

75. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

76. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

77. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both Incumbent LECs and CLECs. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for

2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed LECs. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

78. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent LECs. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were Incumbent LECs. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of Incumbent LECs can be considered small entities.

79. Competitive Local Exchange Carriers (CLECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of CLECs. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were CLECs. Of these providers, the

Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

80. Interexchange Carriers (IXCs). Neither the Commission nor the SBA have developed a small business size standard specifically for IXCs. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

81. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the

provision of prepaid card services. Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

82. Local Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

83. Toll Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if

it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

84. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

85. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that

number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

86. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound." These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than \$25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

87. As of March 31, 2024, there were 1,382 licensed commercial television stations. Of this total, 1,263 stations (or 91.4%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2024, there were 383 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,829 low power television (LPTV) stations and 3,118 TV translator stations. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small

entities under the above SBA small business size standard.

88. *Radio Stations.* This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public." Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than \$25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

89. The Commission estimates that as of March 31, 2024, there were 4,427 licensed commercial AM radio stations and 6,663 licensed commercial FM radio stations, for a combined total of 11,090 commercial radio stations. Of this total, 11,088 stations (or 99.98%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2024, there were 4,320 licensed NCE FM radio stations, 1,960 low power FM (LPFM) stations, and 8,913 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

90. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or

television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of “small business” is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

91. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

92. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a “small cable operator,” which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that

would qualify as small cable operators under the definition in the Communications Act.

93. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

94. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

95. *Satellite Telecommunications*. This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size

standard for this industry classifies a business with \$38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

96. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

97. *RespOrgs*. Responsible Organizations, or RespOrgs (also referred to as Toll-Free Number (TFN) providers), are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber. Based on information on the website of SOMOS, the entity that maintains a registry of Toll-Free Number providers (SMS/800 TFN Registry) for the more than 42 million Toll-Free numbers in North America, and the TSS Registry, a centralized registry for the use of Toll-Free Numbers in text messaging and multimedia services, there were

approximately 446 registered RespOrgs/ Toll-Free Number providers in July 2021. RespOrgs are often wireline carriers, however they can include non-carrier entities. Accordingly, the description below for RespOrgs include both Carrier RespOrgs and Non-Carrier RespOrgs.

98. *Carrier RespOrgs.* Neither the Commission nor the SBA have developed a small business size standard for Carrier RespOrgs. *Wired Telecommunications Carriers*, and *Wireless Telecommunications Carriers (except Satellite)* are the closest industries with a SBA small business size applicable to Carrier RespOrgs.

99. *Wired Telecommunications Carriers* are establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

100. *Wireless Telecommunications Carriers (except Satellite)* engage in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250

employees. Based on this data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

101. *Non-Carrier RespOrgs.* Neither the Commission, nor the SBA have developed a small business size standard Non-Carrier RespOrgs. *Other Services Related to Advertising* and *Other Management Consulting Services* are the closest industries with a SBA small business size applicable to Non-Carrier RespOrgs.

102. The *Other Services Related to Advertising* industry establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services). The SBA small business size standard for this industry classifies a business as small that has annual receipts of \$16.5 million or less. U.S. Census Bureau data for 2017 show that 5,650 firms operated in this industry for the entire year. Of that number, 3,693 firms operated with revenue of less than \$10 million. Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

103. The *Other Management Consulting Services* industry contains establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry. The SBA small business size standard for this industry classifies a business as small if it has annual receipts of \$16.5 million or less. U.S. Census Bureau data for 2017 show that 4,696 firms operated in this industry for the entire year. Of that number, 3,700 firms had revenue of less than \$10 million. Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

104. The *NPRM* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance

requirements for collecting regulatory fees from small entities. Small and other regulated entities are required to pay regulatory fees on an annual basis. The cost of compliance with the annual regulatory assessment for small entities is the amount assessed for their regulatory fee category and should not require small entities to hire professionals to comply, as they are accustomed to paying the annual fees and most should be familiar with both the Commission's current collection process as well as the process prior to the COVID-19 pandemic.

105. The *NPRM* proposes changes to the current fee waiver process which may impact small entities. The *NPRM* proposes to return to normal, pre-COVID-19 pandemic operations and discontinue temporary waiver relief from regulatory fees available in the *FY 2023 Report and Order* that was not codified at that time. This includes reinstating the Commission's policy of requiring down payments for installment payment of regulatory fee debt. The proposed changes would also require small and other entities seeking relief through a waiver, reduction, and/or deferral of fees to submit all financial documents necessary to support their hardship request. We propose to make this change effective for fiscal year 2025 to allow regulatory fee payors more time to comply with this change in policy. Small entities that continue to have financial difficulties related to the economic impact of the pandemic may be able to take advantage of the streamlined waiver processes codified in the *FY 2023 Report and Order*, including permitting parties to submit a single waiver request for various forms of relief electronically, instead of separate filings.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

106. The *RFA* requires an agency to describe any significant alternatives that could minimize impacts to small entities it has considered in reaching its proposed approach, which may include the following four alternatives, among others: "(1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

107. *Assessment of Regulatory Fees.* For FY 2024, we propose to employ the same methodology as the Commission did in FY 2023, however, we conclude that changes within the Commission's organizational structure and additional staff resources merits a review of the FY 2023 reallocations of the FTEs located in the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau that were previously considered to be indirect FTEs and were allocated as direct FTEs to a core bureau. Specifically, effective on April 10, 2023, the International Bureau was eliminated by establishing a new Space Bureau and a new Office of International Affairs, and the Public Safety and Homeland Security Bureau have since hired 11 additional staff members. We therefore analyzed the work being done by the new staff within the Public Safety and Homeland Security Bureau to determine whether their work is being spent on the regulation and oversight of a regulatory fee payor such that their work should be allocated as direct to a core bureau, solely for regulatory fee purposes. We also analyzed the FTEs previously reallocated as direct to a core bureau in FY 2023 for regulatory fee purposes to determine whether there have been any shifts in work assignments such that the number of allocations to a core bureau for regulatory fee purposes should be adjusted. Also, in instances where an FTE was previously allocated to the International Bureau as direct for regulatory fee purposes, we analyzed the specific work done by the FTE to determine whether such FTE should be allocated to the new Office of International Affairs or the new Space Bureau. We limited our analytical efforts for FY 2024 to address the specific changes within the Commission, and while we considered conducting a high-level analysis this fiscal year of all FTEs within the Commission, we opted not to because we believe the adjustments we made for FY 2024 reasonably reflect the major changes in the burden of work within the Commission. Based on the results of our evaluation, we propose that certain indirect FTEs could be reassigned as direct FTEs and incorporate these into the count of FTEs of the relevant core bureau for purposes of calculating regulatory fees for FY 2024, which could reduce regulatory fee obligations for some small and other regulatory payees.

108. Additionally, on March 13, 2024, the Commission released the *Space and Earth Station Regulatory Fees NPRM*

seeking comment on proposed changes to the regulatory fee methodology used for assessing space and earth station regulatory fees for FY 2024. In the *NPRM*, we propose regulatory fee rates based on the proposals set forth in the *Space and Earth Station Regulatory Fees NPRM*. However, our proposed space and earth station regulatory fee rates are estimates because we recognize that, ultimately, final space and earth station regulatory fee rates are dependent upon the outcome of the *Space and Earth Station Regulatory Fees* proceeding. Accordingly, we do not seek comment again in this proceeding on the specific proposals to adjust our existing methodology for assessing space and earth station regulatory fees, or to adopt an alternative methodology for assessing space station regulatory fees, which were set forth in the *Space and Earth Station Regulatory Fees NPRM*. Instead, comments pertaining to the proposals set forth in the *Space and Earth Station Regulatory Fees NPRM* regarding the categories and allocation of fees for space and earth stations should be submitted in the proceeding, MD Docket No. 24–85, and need not be submitted again in response to the *NPRM*. If any of the proposals are adopted as part of the subsequent *Space and Earth Station Regulatory Fees Report and Order*, it may increase or reduce the regulatory fee burden on some satellite entities.

109. *Broadcast Regulatory Fees.* In the *NPRM*, we propose to continue to assess fees for full-power broadcast television stations based on the population covered by a full-service broadcast television station's contour which may reduce the economic impact of the regulatory fees for some small licensees. While the population-based methodology increases fees for some licensees and reduces fees for others, we believe the population-based metric better conforms with the service of broadcasting television to the American people. In addition, small licensees experiencing financial hardship will continue to have access to fee relief, such as waiver, reduction, deferral and/or installment payment of their regulatory fees and may be exempt from paying a regulatory fee if the assessed fee is below the de minimis threshold that the Commission has established.

110. *Temporary Relief Measures Due to Economic Effects of COVID–19 Pandemic.* During the COVID–19 pandemic and through FY 2023, the Commission provided certain temporary relief to regulatory fee payors experiencing financial hardship caused or exacerbated by the COVID–19 pandemic through a combination of

partial rule waivers and direction to the Office of the Managing Director in exercising its delegated authority. In the *NPRM*, we do not plan to implement these temporary measures for FY 2024. The circumstances for which the measures were temporarily implemented have changed. The National Emergency COVID–19 pandemic has ended and the national economy is rebounding. We recognize that some regulatory fee payors may be experiencing lingering or continuing financial difficulties related to the pandemic's economic effects, but we believe that sections 1.1166 and 1.1914 of our rules, now streamlined and simplified, offer those fee payors a straightforward path to regulatory fee relief.

111. *Non-Operating Broadcast Stations.* In the *NPRM*, we seek comment on ending a policy of presuming that dark or silent stations have experienced financial hardship and therefore merit grant of a request for waiver of regulatory fees on the basis of financial hardship, without requiring submission of evidence of actual financial hardship. This policy was first mentioned by the Commission in 1995, and then applied by the Commission's Office of the Managing Director in 1996. The Commission, however, has never codified this policy and it is rarely used. The policy, moreover, appears to assume that the only rationale for a dark or silent station is financial duress. There is no such limitation, however, contained in section 73.1740(a)(4) of the Commission's rules. Licensees might go dark for different reasons depending on each station's particular circumstances. Thus, drawing on the Commission's experience since establishment of the policy in 1995, the assumption that requiring financial information in a request for waiver of regulatory fees is unnecessary by the operators of a dark or silent station appears to be no longer accurate in 2024. In the *NPRM*, we therefore propose to end the assumption that stations are dark or were recently dark or bankrupt are experiencing financial distress when they file a request for waiver of regulatory fees. We propose instead to require these licensees to submit supporting financial documentation with their fee requests to prove financial hardship sufficient to justify a fee waiver, just as all other regulatory fee payors are required to do under section 1.1166 of our rules. In order to give regulatory fee payors more time to make any necessary changes to comply with this change in policy, we propose to make the change effective for fiscal year 2025.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

112. None.

VII. Ordering Clauses

113. Accordingly, *it is ordered* that, pursuant to sections 47 U.S.C. 4(i), 4(j), 9, 9A, and 303(r) of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), this Notice of Proposed Rulemaking *is hereby adopted*.

114. *It is further ordered* that the Commission’s Office of the Secretary *shall send* a copy of this Notice of Proposed Rulemaking, including the

Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.Federal Communications Commission.

Katura Jackson,
Federal Register Liaison Officer.
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